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TRANSCRIPT OF RECORD

Supreme Court of the United States

CENTRAL TERM, 1909

No. 403

MORALIS RUDICK, PETITIONER,

**vs.
THE PENNSYLVANIA RAILROAD, MISSOURI PACIFIC
RAILROAD COMPANY, DEFENDANT.**

**RECORDED IN THE LIBRARY OF THE SUPREME COURT OF THE
UNITED STATES, WASHINGTON, D.C., ON**

APRIL 1, 1910.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 403

RUDOLPH REIDER, PETITIONER,

v.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC
RAILROAD COMPANY, DEBTOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

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[fol. a]

[Captions omitted]

[fol. 1]

**IN UNITED STATES DISTRICT COURT, EASTERN
DISTRICT OF LOUISIANA**

PRAECLPICE FOR RECORD ON APPEAL—Filed March 11, 1949

To: A. Dallam O'Brien, Esq., Clerk of The District Court
of the United States for the Eastern District of Louisiana:

SIR:

It is hereby agreed between the undersigned parties, and we hereby request, that the record on appeal in the above-entitled case shall include the following:

(1) The complaint.

A. The typed copy of the railroad bill of lading attached hereto, which excludes the contract terms and conditions on the reverse side of said bill of lading, and which is to be substituted in lieu of the photostatic copy of said bill of lading which was originally attached to the complaint and made a part thereof.

(2) The motion to dismiss.

(3) The stipulation of parties.

A. The following parts of the translation of the ocean bill of lading issued by Flota Mercante del Estado, which is attached to said stipulation and made a part thereof:

1. The heading and introductory paragraph on [fol. 2] page 1 of said translation;
2. Pages 10-11 of said translation.

(4) Final decree dismissing the suit.

(5) Notice of Appeal.

(6) Assignment of errors.

(7) This praecipe.

Very truly yours, (S.) Malcolm W. Monroe of
D  tch, Kerrigan & Stiles, Attorneys for Plain-
tiff Appellant, 1790 Hibernia Building, New Or-
leans, Louisiana; (S.) Elizabeth R. Haar of Mill-
ing, Godechaux, Saal & Saunders, Attorneys for De-
fendants, Whitney Building, New Orleans, Loui-
siana.

New Orleans, Louisiana, March 11th, 1949.

In UNITED STATES DISTRICT COURT

COMPLAINT—Filed July 19, 1948

To the Honorable, the Judges of the District Court of the
United States in and for the Eastern District of Louisiana,
New Orleans Division:

I

Plaintiff, Rudolf Reider, is a citizen of the State of [fol. 3] Massachusetts, engaged in the business, among other things, of importing hides into the United States. Guy A. Thompson is Trustee in Bankruptcy of the Missouri-Pacific Railroad Company, debtor, a railroad corporation organized under the laws of the State of Missouri, and maintaining an office and place of business in the City of New Orleans, Louisiana, and elsewhere in the State of Louisiana, into and through which, it operates a line of railroads as a common carrier of goods for hire in interstate commerce.

II

This action arises under the Carmack Amendment to the Transportation Act, specifically the Act of June 29, 1906, C 3591; 34 Statutes 593; 49 U.S.C.A., Section 20(11), a law of the United States regulating commerce.

III

On or about August 10, 1944, defendant railroad received, at the port of New Orleans, Louisiana, issuing therefor its

receipt and through bill of lading, copy of which is attached hereto and made part hereof, twenty-one (21) cases, and twelve (12) barrels of skins and wool, all in good order and condition, consigned, in bond, to the Collector of Customs at Boston, Massachusetts, to be carried over defendant's own line as initial carrier, and over the lines of connecting carriers, and delivered to the Collector of Customs in Boston, for the account of plaintiff.

[fol. 4]

IV

On arrival at destination, the shipment was found to be badly damaged by water and was stained and moldy, such damage and injury to said hides being to the extent of two thousand and no/100 (\$2,000.00) dollars.

V

Plaintiff is, and was, at all material times, the lawful holder of the bill lading hereinabove referred to and the owner of the goods involved, and has done and performed all conditions precedent on its part to the bringing of this action.

Wherefore, plaintiff demands judgment:

(1) For the sum of two thousand and no/100 (\$2,000.00) dollars, with interest at the legal rate from August 10, 1944; and for all costs; and

(2) For such other and further relief as equity, law and the nature of the case may require or permit.

(S.) James J. Morrison of Deutsch, Kerrigan & Stiles, Attorneys for Complainant, 1700 Hibernia Building.

Serve: Missouri-Pacific Railroad Co., Guy A. Thompson, Trustee, through its proper officer for service of process.

[fol. 5] EXHIBIT ATTACHED TO ORIGINAL COMPLAINT

Guy A. Thompson, Trustee, Missouri Pacific Railroad Co., Debtor.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

"Rio Parana"

At New Orleans, La., Aug. 10, 1944, from H. P. Lambert Co., Inc. X SS

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract), agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by *by* law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns:

(Mail or street address of consignee—For purposes of notification only.)

In bond to Collector of Customs for Consigned to H. P. Lambert Co., Inc., % Manufacturers Whse. Destination Boston, State of Mass., Private Siding County of

Route MP ESTL NKP DTSL GT CV B&M NH DELY.
Delivering Carrier Car Initial CCCSTL
Car. No. 49308.

[fol. 6]	Description of Articles, Special Marks, and Exceptions	Weight (subject to Correction)	Class or Rate	Check Card
No Pkgs L/Cs	Lizard Skins Mkd ERSRL 3097	Gross 71600		
2 Cs	Lizard Skins Mkd ERSRL 3065/98	Tare 47000		
16 Cs	Sheepskins Mkd ERSRL Vs/Ns	Net 24600		
2 Cs	Lizard Skins Mkd ERSRL 3083/84			
12 Bls	Wool Mkd BIR Order 87-861* pr bale			

IN BOND IT—408/438/436/437/463 Manifest attached to W/B Seals
USC A 146257/65

REF LA-1042, 1209, 1071.

"Under except onto rule 10 load all consignments together carload rate on each commodity to apply." Loaded at Seventh St. Wharf.

* If the shipment moves between two ports by a carrier by water, the law required that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

H. P. Lambert Co Inc Shipper. G. W. Dolard, Agent

Per _____ Per s/E. J. Foster

Permanent Post Office Address of Shpper

[fol. 7] IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO DISMISS—Filed June 27, 1947

To the Honorable, the Judges of the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division:

The Defendant moves the Court to dismiss this action because the complaint fails to state a claim against Defendant upon which relief can be granted.

(S.) M. Truman Woodward, Jr., Attorney for Defendant, 1122 Whitney Building, New Orleans 12, Louisiana.

Of Counsel:

(S.) Milling, Godchaux, Saal & Milling, 1122 Whitney Building, New Orleans 12, Louisiana.

IN UNITED STATES DISTRICT COURT**STIPULATION AS TO CERTAIN FACTS—Filed December 30, 1948**

It is hereby stipulated and agreed by and between the parties to the above entitled cause; by their respective attorneys, as follows:

1. The 16 cases of sheepskins, marked "ERSRL V-Ns", shown on the bill of lading issued by the Missouri Pacific Railroad, a copy of which is attached to the complaint in the above entitled cause, were carried from the port of Buenos Aires, Argentina, to the port of New Orleans, Louisiana, by the Steamship Rio Parana under the terms [fol. 8] and conditions of Bill of Lading No. 42 issued by Flota Mercante del Estado.

2. The document marked "A" attached hereto and made a part hereof as if set forth in extenso herein is a complete and accurate English translation of said Bill of Lading No. 42, a photostat of the original of which, in Spanish, was previously attached ~~to~~; and filed in the record with counsel for plaintiff's statement of reasons in opposition to the motion to dismiss, and is likewise made a part hereof as if set forth in extenso herein.

3. The various ocean bills of lading covering the shipment from the port of Buenos Aires to the port of New Orleans aboard the said Steamship Rio Parana of the 5 cases of lizard skins marked "ERSRL 3097", "ERSRL 3065, 98", "ERSRL 3083, 84", and the 12 barrels of wool marked "BIR Order 87—861 = pr. bale", which merchandise is included in the afore-mentioned bill of lading issued by the Missouri Pacific Railroad, cannot now be obtained; and whereas it is the information and belief of the undersigned that the provisions, terms and conditions of these ocean bills of lading are the same as Bill of Lading No. 42, with the exception of the description of the merchandise involved in each shipment shown under "details given by shipper"; and whereas the damage alleged by plaintiff to

have been sustained to the shipment under the rail bill of [fol. 9] lading is limited to the 16 cases of sheepskins marked "ERSRL Vs. Ns", it is agreed by the undersigned that any questions raised by the defendant's motion to dismiss which necessarily entail consideration, construction and/or interpretation of the ocean bills of lading shall be governed by said Bill of Lading No. 42.

Deutsch, Kerrigan & Stiles, - By: (S.) Malcolm W. Monroe, 1700 Hibernia Building, New Orleans, Louisiana, Attorneys for Plaintiff. Milling, Godchaux, Saal & Milling, By: (S.) Elizabeth Ridnour Haak, Whitney Building, New Orleans, Louisiana, Attorneys for Defendant,

New Orleans, Louisiana.

December 29, 1948.

[fol. 10] EXHIBIT "A" TO STIPULATION

Translation of the Ocean Bill of Lading Issued by Flota Mercante del Estado, Attached to Foregoing Stipulation

Argentine Republic, Ministry of Marine

General Administration of the State Merchant Fleet

Buenos Aires

Received by the State Merchant Fleet from the "shipper" whose name will appear hereinafter, goods or packages which are said to contain the goods detailed hereinafter, in apparent good order and condition, except as otherwise indicated in this bill of lading, to be transported subject to all of the conditions thereof, which are set forth hereinafter, and insofar as is not provided hereinafter, to the provisions of the Argentine Commercial Code and Argentine laws, uses and customs, to the port or place of discharge named therein or nearest thereto to which the ship can safely approach, enter and leave, remaining afloat in all states and conditions of the sea and weather, to be there delivered or trans-shipped upon payment of charges due. If the shipment of all or part of the goods cannot be made in the ship mentioned in this bill of lading, for any reason whatsoever, the carrier can send them under the conditions stipulated in this document, in the first ship [fol. 11] which it may have available, whether owned by it,

or at its option, by any other company. It is agreed that the custody and transportation of the goods shall be subject to all the clauses of this bill of lading and in a subsidiary manner insofar as is provided therein, to the provisions of the Argentine Commercial Code and Argentine laws, uses and customs, all of which shall govern the release of any sort whatever between the shipper or consignee and the carrier, captain or ship, in all contingencies, in whatever weather or place they may occur, and also in case of any deviation of the ship or in case of its unseaworthiness.

Bill of Lading No. 42

The Shipper, Ship, Consignee, Destination and Goods which are specified in this bill of lading are the following:
Shipper: Emilio Rosler S.R.L. **Ship:** Rio Parana. Leaving from: _____ (with the right to substitute, tranship and other provisions which are expressed above). **Port of Shipment:** Buenos Aires. **Port of Discharge of the Ship:** New Orleans, destination of the goods: _____ (if the goods are to be transshipped out of the port of discharge). **Shipper to the Order of:** The First National Bank of Boston. **Notice of arrival:** should be addressed to (if consigned to Shipper's Order) Rudolt Reider 39 South Street, Boston Mass., U. S. A.

[fol. 12].

Details given by shipper

Marks and Nos.	Number of Packages	Description of Merchandise	Kilograms Net	Pounds Net	Gross	Pounds Net	Gross	Value (de- clared by shipper only for Cus- toms use)
(Received on Board)								
EIRSRL								
3066/68]								
3073/82]	16	(Cases of cured Skins)	3715	4664	819	10282		
3094/96]		(Dressed sheep-skins)						

(Stamped across the face of the bill of lading) "Original."

Freight Paid in Buenos Aires

In case upon arrival at port of destination entry of the goods covered by this bill of lading is not permitted for any reason unrelated to the ship, the captain shall have the right to send them to a fiscal or private depository or on launches, for account and at the risk of the goods, there also being for account of the goods the delays, damages and injuries to the ship which may be caused by this operation. If its discharge be not permitted the Carrier may take it to the port of departure or unload it in any port within or without the territory of the United States, the shipper and/or consignee being liable for the freight corresponding to this new carriage.

"The freight indicated in this bill of lading shall be subject to duty in accordance with conditions which are in force on the date of sailing of the ship."

Total Number of packages: 16.

〔63〕 93

In case of collision of the ship with another, as a result of the negligence of the latter or any other act, omission or negligence of the captain, pilot or crew of the former or employees of the Fleet, the owners of the goods carried under this bill of lading shall indemnify the Fleet for any obligation to the other ships, when such obligation results from losses or damages claimed by the Owners of the merchandise transported under this bill of lading against the other ship and payable by the other ship.

Any merchandise that may be in transit for another port shall be for the exclusive account and at the risk of the same and the responsibility of the ship shall cease upon its discharge with the exceptions provided on this bill of lading.

Settlement of Freight:
 541 P3 a 22,50 x 40P3 US\$ 404,31
 35% 130,85
 US\$ 435,16
 401-25 M\$N 1 746,08
 Freight Payable At: Buenos Aires

In Witness whereof, the captain or the agent of the above named ship has signed Three original bills of lading, all covering the same shipment and of the same date, and having complied with one, the others are without force.

Dated at Buenos Aires, on the
day of June 1944.

**General Management of the
State Merchant Fleet
Buenos Aires, Republic of Argentina**

[fol. 14] - Is UNITED STATES DISTRICT COURT

ORDER DISMISSING SUIT—Filed February 2, 1949

Borah, J:

This matter came on for hearing on January 5th, 1949 on motion of defendant to dismiss for failure to state a claim upon which relief could be granted and was argued by counsel for the respective parties and submitted when the Court took time to consider:

Now, therefore, on due consideration thereof:

It is ordered by the Court that defendant's motion to dismiss for failure to state a claim upon which relief could be granted be, and the same is hereby granted and the suit is hereby dismissed.

See: Roberts' Federal Liabilities of Carriers, Volume 1, Section 393;

Texas & New Orleans Railroad Company v. Sabine Train Company, 227 U. S. 111, 57 L. Ed. 443;

Railroad Commission of Louisiana v. Texas & Pacific Railway Company, 229 U. S. 336, 57 L. Ed. 1215;
 Illinois Central Railroad Company v. DeFuentes, 236 U. S. 157, L. Ed. 517;
 Western Oil Refining Company v. Lipscomb, 244 U. S. 346, 61 L. Ed. 1181;
 U. S. v. Erie Railroad Company, 280 U. S. 98, 74 L. Ed. 187.
 (S.) W.G.B.

[fol. 15] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed February 23, 1949

Sirs:

Please take notice that Rudolph Reider, plaintiff in the above entitled and numbered cause, hereby appeals to the next United States Circuit Court of Appeals for the Fifth Circuit to be held in the United States Court House (Post Office Building), City of New Orleans, from the final decree of this court, dismissing the captioned suit, entered herein on the 2nd day of February, 1949.

(S.) Malcolm W. Monroe of Deutsch, Kerrigan & Stiles, Attorneys for Plaintiff-Appellant, 1700 Hibernia Building, New Orleans, Louisiana.

New Orleans, Louisiana, 23rd day of February, 1949.

To: A. Dallam O'Brien, Esq., Clerk of Court. Messrs. Milling, Godechaux, Saal and Saunders, Whitney Building, New Orleans, Louisiana, Attorneys for Defendant.

[fol. 16] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed March 11, 1949

Plaintiff, Rudolph Reider, hereby assigns error in the decree, order and decision of the District Court in the above entitled and numbered action as follows:

1. The Court erred in holding that the complaint failed to state a claim upon which relief could be granted.

2. The Court erred in holding, in effect, that a shipment which has its origin in a foreign country, is carried by an ocean carrier to a port of the United States, and which is subsequently transported by a rail carrier over its own and connecting lines, under a new, separate and distinct bill of lading issued by such rail carrier, from said port to a point in another state, falls outside the scope of the Carmack Amendment.

3. The Court erred in holding that the terms and provisions of the bills of lading, ocean and rail, are not to be considered in determining the applicability of the Carmack Amendment to the shipment in question.

4. The Court erred, in relying on, and in adopting the determinative test of, cases which were concerned, [fol. 17] not with the applicability of the Carmack Amendment, but merely with the question of whether the particular commerce in each instance was intra-state or interstate or foreign and, thus, within the state or federal domain for the purposes of taxation and/or regulation.

5. The Court erred in not holding that the defendant railroad fell within the test of applicability of the Carmack Amendment as set forth in that statute, i.e., "Any common carrier . . . receiving property for transportation from a point in one State . . . to a point in another State . . .".

6. The Court erred in not holding that any element of a "foreign shipment" which might have been involved in the shipment in question ceased to exist with the termination of the ocean contract of carriage, i.e., at the time of discharge of the cargo at the port of New Orleans.

7. The Court erred in failing to hold that the ocean bill of lading was not a through bill of lading; that it did not provide for rail carriage after discharge from the ocean vessel; and that the subsequent, distinct and separate contract of carriage entered into by the defendant railroad made it an "initial carrier" and, as such, subject to be sued under the Carmack

Amendment for damage which occurred on its line or those of the connecting rail carriers.

8. The Court erred in dismissing the suit.

(S.) Malcolm W. Monroe of Deutsch, Kerrigan & Stiles, Attorneys for Rudolph Reider, Plaintiff-Appellant.

New Orleans, Louisiana, March 11th, 1949.

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 31, 1949

No. 12739

RUDOLF REIDER

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad Company, Debtor

On this day this cause was called and after argument by Malcolm W. Monroe, Esq., for appellant, and Mrs. Lillian Elizabeth Ridnour Haak, and M. Truman Woodward, Jr., Esq., for appellee, was submitted to the Court.

[fol. 21] **OPINION OF THE COURT, CONCURRING OPINION OF HUTCHESON, CIRCUIT JUDGE, AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed July 20, 1949.**

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12739

RUDOLF REIDER, Appellant,

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad Company, Debtor, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

(July 20, 1949)

Before Sibley, Hutcheson, and McCord, Circuit Judges

McCord, Circuit Judge:

Rudolf Reider brought this suit against Guy A. Thompson, as Trustee of the Missouri-Pacific Railroad Company, Debtor, for alleged damage by the carrier to a shipment of

twenty-one cases and twelve barrels of skins and wool owned by appellant, which had been shipped from Buenos [fol. 22] Aires, Argentina to appellant at Boston, Massachusetts, by way of the Port of New Orleans, Louisiana.

The complaint purports to be brought under the Carmack Amendment to the Interstate Commerce Act, and alleges that the carrier received the goods at New Orleans, "consigned, in bond, to the Collector of Customs at Boston, Massachusetts"; that upon arrival at its destination the shipment was damaged by water, stained and moldy, to the extent of \$2,000.00, which amount, plus interest thereon, is sought by this suit.

The defendant filed a motion to dismiss the action which was granted by the trial court, on the ground that the complaint failed to state a claim upon which relief could be granted. This appeal is taken from that ruling.

The controlling questions presented are: (1) whether the Carmack Amendment is applicable to a shipment from a foreign country which is intended for uninterrupted transportation and delivery to a particular destination within the United States, and (2) whether the issuance of a bill of lading by a domestic carrier on such shipment gives the shipper a right to sue that carrier under the Carmack Amendment.

It appears from the bill of lading issued by the respondent carrier that the goods were received at New Orleans on August 10, 1944, from "H. P. Lambert Co., Inc." and the S. S. "Rio Parana", and that they were consigned to H. P. Lambert Co., Inc., (shipper) "c/o Manufacturers Whse Destination Boston State of Mass in Bond to Collector of Customs". By stipulation between counsel for [fol. 23] the respective parties, the ocean bill of lading governing the shipment while on voyage from Buenos Aires, Argentina to New Orleans, Louisiana, is also made a part of the record. It appears therefrom that the goods were originally shipped by "Emilio Rosler S. R. L." on the S. S. "Rio Parana", to the order of "The First National Bank of Boston", notify "Rudolf Reider, 39 South Street, Boston, Mass., U. S. A." The port of shipment is revealed as Buenos Aires and the port of discharge of the ship as New Orleans.

We are of opinion the Carmack Amendment does not extend the liability of domestic carriers to cover shipments

arising in a foreign country, and intended for through transportation to a point within the United States. 49 USCA Section 20(11); *Alwine v. Pennsylvania R. Co.*, 15 Atlantic 2d 507; Roberts, Federal Liabilities of Carriers, Vol. 1, Sec. 393.

There is persuasive authority from both Federal and state courts to the effect that shipments to and from non-adjacent foreign countries were not intended to be governed by the Carmack Amendment, and that actions to enforce liability against a domestic carrier for such foreign shipments could not be brought thereunder. *Missouri Pacific R. R. Co. v. Porter*, 273 U. S. 341; *A. Russo & Co. v. U. S.*, 40 F. 2d 39; *J. H. Hamlen & Sons Co. v. Illinois Cent. R. Co.*, 212 F. 324; *Best v. Great Northern Ry. Co.*, 150 N. W. 484; *Chicago, M. & St. P. Ry. Co. v. Jewett*, 171 N. W. 757.

The mere issuance of a supplemental bill of lading by a domestic carrier to cover its portion of the transportation [fol. 24] and delivery of a through foreign shipment does not interrupt or affect the continuity and foreign character of the shipment, so as to extend a carrier's liability to such foreign shipment under the Carmack Amendment. *Mexican Light & Power Co. v. Texas Mexican Ry. Co.*, 331 U. S. 731; *A. Russo & Co. v. U. S.*, 40 F. 2d 39. Manifestly, this is true where the carrier's bill of lading shows on its face that it was issued in furtherance of the original foreign shipment, and that no new, separate, or distinct domestic shipment was intended. *A. Russo & Co. v. U. S.*, 40 F. 2d 39; See also, *U. S. v. Erie R. R. Co.*, 280 U. S. 98; *Texas & New Orleans R. R. Co. v. Sabine Tram Co.*, 227 U. S. 111.

The Carmack Amendment was passed to enable a shipper to collect for damages to his shipment against the first of a series of carriers, leaving the initial carrier to his recourse against any intervening carriers which may have caused the damage. It was not intended to apply where, as here, a shipper brings an action not against the initial foreign carrier, but against an intervening domestic carrier, and attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier. In such instance, if the intervening carrier were held liable, he might have no enforceable cause of action for recovery of his damages against the foreign carrier, if the latter were actually responsible. It becomes manifest that the

Carmack Amendment was never designed or intended to hold a domestic carrier liable for damage to a foreign shipment under such circumstances, and it would be unjust to do so.

In this case the bills of lading reveal that a continuous and uninterrupted shipment "in bond" from a foreign [fol. 25] country to a particular destination within the United States was contemplated. Under such circumstances, the language of the court in the case of *Alwine v. Pennsylvania R. Co.*, 15 Atlantic 2d 507, is applicable here:

"Finally, since the law contained in Section 20 is a radical departure from the common law as applied to the liability of carriers for the acts of others, its effect should not be extended beyond the plain meaning of the language employed and its evident purpose.

"All that we have said applies with equal force whether the damages arose on an intermediate line within the United States or outside. It cannot be contended that the Carmack amendment took effect at the boundary between the United States and adjacent foreign territory for the amendment covers the entire movement and to so hold would do violence to the plain language of that amendment."

The judgment is
Affirmed.

Hutcheson, Circuit Judge, Concurring:

Proffered by my brother, McCord, an opinion affirming, and by my brother, Sibley, one reversing the district judge, and told firmly by each to stand up like a man and be counted, I have at long last, but not without some slight misgivings ranged myself with McCord and the district judge and for his affirmance.

[fol. 26] The misgivings I have do not spring from the over-all picture of the case. They spring entirely from the fact, which my brother, Sibley, has artfully pointed out, that if the words he quoted from the invoked section are construed, as he wants them to be, by themselves apart from their context in the section as a whole, as amended, and without regard to its long and informative judicial and legislative history and that of the Federal Bills of Lading Act, 49 USCA, Secs. 81 to 124, it would be difficult to find

sault with his conclusion. "This case falls within these words".

These misgivings, however, entirely disappear when consideration is given to the history of the section and the uniform course of decision¹ as to its non-applicability to shipments originating in foreign countries and the inapplicability of the Federal Bills of Lading Act² to shipments so originating. If, in short, the problem the case poses is examined in its setting as a whole and not narrowly and out of focus as centered in and solved by the selected words, I think it plain that my brother, McCord, has the right of it.

It is true that since this is not, under the Federal Bills of Lading Act, an order bill but a straight bill, and the shipper, as the minority points out, will have to prove that the goods were in good condition when the railroad received them and that the damage sued for occurred afterwards, no great harm will come to the carrier from the suit if, as it claims, [fol. 27] the damage complained of occurred on the ship.

But this is not an answer to the jurisdictional question whether the complaint states a claim under the Carmack Amendment to the Interstate Commerce Act, 49 U. S. C. A. Sec. 20 (11), and that district judge was right in dismissing it.

I concur in the opinion affirming the judgment.

Sibley, Circuit Judge, Dissenting:

The plain, unambiguous words of Section 20(11) of the Interstate Commerce Act, as amended, 49 U. S. C. A. Sec. 20(11) uphold this suit. The applicable words are: "Any common carrier, railroad or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury

¹ See cases cited in the majority opinion, especially Alwine v. Pennsylvania R. Co., 15 Atl. (2) 507.

² Chesapeake & Ohio v. St. Natl. Bank, 133 SW (2) at 516; Williston on Contracts, Vol. IV, Sec. 1116.

to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading. . . ." The Missouri-Pacific Railroad Co. is a railroad subject to the Interstate Commerce Act. It received [fol. 28] this property at New Orleans, a point within a State, for transportation to Boston, a point in another State; it issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading. H. P. Lambert and Co. Inc. is named as consignor and consignee; but the allegation is that plaintiff was at the time the owner. The necessary implication is that Lambert and Co. Inc., was acting for plaintiff. The case is squarely within the words of the Act. There is no federal case to the contrary.

The goods, it appears from the ship's bill of lading introduced by stipulation, came to New Orleans by the ship Parana from Buenos Aires, Argentina. The ship's bill of lading named Emilio Rosler as shipper, the port of shipment Buenos Aires, the port of discharge New Orleans, and stated the freight was paid at Buenos Aires. The consignee was stated in these words: "Shipped to the order of The First National Bank of Boston: Notice of arrival should be addressed to (if consigned to shipper's order) Rudolf Reider, 39 South Street, Boston, Mass." The ship issued no through bill of lading to Boston. It agreed only to deliver to the order of the Bank at New Orleans, giving notice of arrival to Reider. There is no privity between the ship and Railroad. Most likely the ship's bill of lading was sent by Rosler to the Bank with a draft on Reider for the purchase money of the hides, and Reider, on being notified of arrival, paid the draft and took up the ship's bill of lading and sent it to Lambert and Co. Inc. at New Orleans, who in Reider's behalf received the goods and arranged to ship them to Boston in bond to the Collector [fol. 29] of Customs there. Reider's allegation that he was owner must be accepted as true on this motion to dismiss, the ship's bill of lading not being irreconcilable therewith. The only point argued about it is that it shows an

intention that the goods should move in uninterrupted transit to Boston as final destination, so that its movement was foreign and not domestic commerce. The cited cases, *Texas and N. O. R. R. Co. vs. Sabine Tram Co.*, 227 U. S. 111; *Louisiana R. R. Commission vs. Texas and P. Ry. Co.*, 229 U. S. 336; *Illinois Cent. R. R. Co. vs. Fuentes*, 236 U. S. 157; *Western Oil Ref. Co. vs. Lipscomb*, 244 U. S. 346; *Missouri Pacific R. Co., vs. Porter*, 273 U. S. 341; and *United States vs. Erie Ry. Co.*, 280 U. S. 98, establish that. But that the commerce is foreign as well as interstate merely confirms the exclusive right of Congress to regulate it. No one of these cases construes or applies the regulation made by Section 20(11). *Mexican Light and Power Co. vs. Texas Mexican Ry. Co.*, 331 U. S. 731, applies the section to a through bill of lading from Sharon, Pennsylvania, to Laredo, Texas, "for export into Mexico", issued by Pennsylvania Railroad Co., where the goods were injured in Mexico. The suit was brought against the Texas Mexican Railway Co., the last carrier which handled the shipment in the United States. The latter had issued a new bill of lading at Laredo, without any new consideration, to facilitate carriage across the Mexican border. The court held the shipment originated under Section 20(11), Mexico being an adjacent foreign country. So that the liability for the damage done in Mexico was on the Pennsylvania Railroad Co. as the receiving carrier, and not on Texas Mexican Railway Co., notwithstanding the latter's bill of lading, which was held to be without consideration [fol. 30] and void. That case rules nothing as to a reverse shipment originating in Mexico or any other foreign country for which Texas Mexican Ry. Co. might at Laredo give its bill of lading for transportation to a point in Pennsylvania. The State court cases of *Aldrich vs. Atlantic Coast Line R. Co.*, 89 S. E. 315; *Best vs. Great Northern Ry. Co.*, 150 N. W. 484; and *Chicago, M. and St. P. Ry. Co. vs. Jewett*, 171 N. W. 757, relate to shipments moving out of the United States, and apparently at a time when an adjacent foreign country as destination was not named in the Section. *Alwine vs. Pennsylvania R. Co.*, 15 Atl. (2) 507, was probably correctly decided, for as it insists Sect. 20(11) is not ambiguous and means what it says, and it says nothing about a shipment coming into the United States "on a through bill of lading" (emphasis by the court). A. Russo

and Co. vs. United States, 40 Fed. (2) 39, was in admiralty for sea damage, the ship and the Missouri Pacific R. Co., having both issued bills of lading in Italy for transportation into the United States. Section 20(11) is not mentioned. The decision was that the Railroad was acting only as agent in respect of the ocean voyage and was not liable for what happened at sea.

In the present case there is no liability assumed for what happened at sea by this Railroad accepting the property at New Orleans and issuing its bill of lading. The sea voyage was over. Congress has not by Section 20(11) made liability to relate back to cover it. Neither the receiving nor delivering carrier, under Section 20(11), has any concern with that. The damage to the hides may have occurred by the fault of the ship, but the complaint alleges no such, for it alleges that the shipment was received [fol. 31] by the Railroad in good condition and delivered in Boston in bad condition. The plaintiff has the burden of proving good condition at New Orleans, and must lose his case if he cannot prove it. There is no presumption of good condition because the hides are recited to be in casks and cases, contents and condition unknown, and such words relieve from any presumption. 9 Am. Jur. Carriers, §422; *St. Louis and Iron Mountain Ry. Co. vs. Knight*, 122 U. S. 29; and under the Bills of Lading Act, 49 U. S. C. A. Sec. 101. Application of Sec. 20(11) here cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel.

Section 20(11) does not say "initial carrier", nor does it except goods which may have begun their travel in a foreign country. Its words are "*Any common carrier*" subject to the Interstate Commerce Act "*receiving property for transportation*" as stated shall issue the bill of lading and assume the liability for damage "*caused by it*" or other carriers who transport under that bill of lading. There is no language in the Section, no reason nor authority to the contrary. This case falls within the words Congress used.

[fol. 32]

JUDGMENT

Extract from the Minutes of July 20, 1949.

No. 12739

RUDOLF REIDER

versus

**GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad
Company, Debtor**

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is, hereby affirmed;

It is further ordered and adjudged that the appellant, Rudolf Reider, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutcheson, Circuit Judge concurs."

"Sibley, Circuit Judge dissents."

22

[fols. 33-48] Petition for rehearing covering 16 pages
filed August 9, 1949, omitted from this print. It was denied,
and nothing more by order of August 22, 1949.

[fol. 49]

ORDER DENYING REHEARING

Extract from the Minutes of August 22, 1949.

No. 12739

RUDOLF REIDER

versus

GUY A. THOMPSON, Trustee, Missouri-Pacific Railroad
Company, Debtor

It is ordered by the Court that the petition for rehearing
 filed in this cause be, and the same is hereby, denied.
 "Sibley, Circuit Judge dissents."

[fol. 50] CLERK'S CERTIFICATE, UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 20 to 49 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 12739 wherein Rudolf Reider is appellant, and Guy A. Thompson, Trustee, Missouri-Pacific Railroad Company, Debtor is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the mimeographed record numbered from 1 to 19 are identical with the mimeographed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of September, A. D. 1949.

Oakley F. Dodd, Clerk of the United States Court of Appeals, Fifth Circuit. (Seal.)

[fol. 51] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 5, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.

[Endorsed on Cover:] Enter Eberhard P. Deutsch, File No. 54,152. U. S. Court of Appeals, Fifth Circuit, Term No. 403. Rudolph Reider, Petitioner, vs. Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor. Petition for writ of certiorari and exhibit thereto. Filed October 15, 1949. Term No. 403 O. T. 1949.

(5746)

Addition to record in No. 403

1-13-50
3-24-64

STIPULATION AND ADDITION TO RECORD

LIBRARY

SUPREME COURT OF THE UNITED STATES SUPREME COURT, U.S.

OCTOBER TERM, 1949

NO. 403

MILDRED WEIDER, PETITIONER

v.

GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR

It is hereby stipulated and agreed by and between Eberhard Deutsch, counsel for petitioner, Rudolph Weider, and H. Truman Woodward, Jr., counsel for respondent, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, that the first three paragraphs of the exhibit attached to the original complaint, appearing as the first eight lines of page 4 of the transcript of the records herein, should appear as follows, rather than in the form in which the same was printed in said transcript:

"Guy A. Thompson, Trustee, Missouri Pacific Railroad Co., Debtor.

"Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading.

"At New Orleans, La., Aug. 10, 1944, from H.P. Lambert Co., Inc. Y 33 "Rico Parana"

New Orleans, Louisiana, January 19th, 1950.

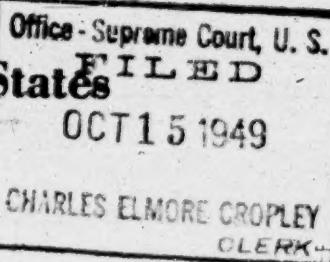
Eberhard Deutsch
Counsel for Petitioner

Rudolph Weider
Counsel for Respondent

LIBRARY
SUPREME COURT, U.S.

Supreme Court of the United States

OCTOBER TERM, 1949



No. 403

RUDOLF REIDER,

Petitioner and Appellant Below,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,

Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT, AND BRIEF IN SUPPORT THERE-
OF.

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No.

RUDOLF REIDER,

Petitioner and Appellant Below,

versus

**GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,**

Respondent and Appellee Below.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Your petitioner respectfully shows:

I

Question Presented

The important question of law presented for determination in this proceeding is:

Is a domestic rail carrier, which issues its own separate, independent, through bill of lading for carriage of property

from a United States port to a point in another state, subject to the provisions of the Carmack Amendment to the Interstate Commerce Act, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the destination of the goods?

II

Summary Statement of Matter Involved

Rudolf Reider brought this suit against Guy A. Thompson, as Trustee of the Missouri Pacific Railroad Company, Debtor, under the Carmack Amendment to the Interstate Commerce Act,¹ for damage to a shipment of skins and wool. The complaint alleges that the carrier received the consignment in good order and condition at New Orleans, Louisiana, issuing its through bill of lading for carriage of the goods by its own and specified connecting lines to Boston, Massachusetts; that upon arrival at Boston, the shipment was found to have been damaged by water, stains and mold, for which damage reimbursement is sought.²

The bill of lading recites that the goods were received by it at New Orleans from "H. P. Lambert Co. Inc. X SS 'Rio Parana'", consigned in bond to the Collector of Customs at Boston for H. P. Lambert Co., Inc.³

The ocean bill of lading⁴ had named Emilio Rosler S. R. L. as the shipper, Buenos Aires as the port of ship-

¹ 34 Stat. 593, 49 USC 20(11).

² R 2-6.

³ R 5-6.

⁴ R 10-13.

ment, and New Orleans as the port of discharge. The space provided in the bill for an ultimate destination of the goods in event of shipment beyond the port of destination was left blank. The consignee was designated in these words: "Shipped to the order of: The First National Bank of Boston; Notice of arrival should be addressed to (if consigned to Shipper's Order) Rudolf Reider 29 South Street Boston, Mass. U. S. A." The stated ocean freight was payable at Buenos Aires.

The respondent below filed a motion to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted,⁵ his contention being that this was a "foreign shipment", having originated in a foreign country and was, therefore, not subject to the provisions of the Carmack Amendment as to the rail carriage from New Orleans to Boston.

The district court sustained the motion and dismissed the action.⁶ Petitioner appealed from this decree,⁷ and on July 20, 1949, the Court of Appeals for the Fifth Circuit (McCord, J.) affirmed the decree, Judge Hutcheson concurring and Judge Sibley dissenting, each judge handing down a separate opinion.⁸

Judge McCord held that the Carmack Amendment does not apply to an interstate shipment within the United States if the goods originated in a foreign country, the domestic bill of lading being merely supplemental to what

⁵ R 7.

⁶ R 14.

⁷ R 15-18.

⁸ Tr 21-32.

4

is in effect a through foreign shipment, even though the foreign bill of lading designated the United States port of entry as the destination of the goods.⁹

Judge Hutcheson, "at long last, but not without some slight misgivings, ranged" himself "with (Judge) McCord". He relied on the decisions which hold that shipments moving in the United States under through bills of lading issued in foreign countries where the shipments originated, are governed neither by the Carmack Amendment nor the Federal Bills of Lading Act; but Judge Hutcheson conceded that the instant case, distinguishably, falls within the strict letter of the Carmack Amendment.¹⁰

Judge Sibley dissented because "the plain, unambiguous words of Section 20(11) of the Interstate Commerce Act as amended . . . uphold this suit"; the railroad being a carrier subject to the Act, "which received this property at New Orleans, a point within a state for transportation to Boston, a point in another state, . . . issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading".¹¹

He called attention to the fact that the ocean carrier had not issued a through bill of lading to Boston, that there was no privity between the ship and the railroad, and that the contract of rail carriage was new, separate and distinct from that for the ocean carriage.¹²

⁹ Opinion, pp. 3-5.

¹⁰ Opinion, pp. 5-6.

¹¹ Opinion, pp. 7-8.

¹² Opinion, p. 8.

Judge Sibley further pointed the distinction between the instant case and those relied on by the district judge and in the majority opinion, one group of which involved the question, not of the applicability of the Carmack Amendment to the carrier, but whether the shipment being considered was foreign as opposed to intrastate commerce, and accordingly subject or not to the exclusive right of Congress to regulate it. In the others, such as *Alwine vs Pennsylvania R. Co.*, ¹³ the shipments moved either to or from foreign countries under through bills of lading.¹⁴

III

Reasons Relied on for Allowance of the Writ

The Court of Appeals for the Fifth Circuit, by a divided court, has decided a significant question of interpretation and application of an important section of the Interstate Commerce Act, which has not been, but should be, settled by this court.

The importance of the question is emphasized by the fact that the decision may well have repercussions throughout the business and financial world in the United States and elsewhere, since it involves the status of all imports which pass beyond the country's ports of entry.

The case does not present merely the liability or non-liability of the instant carrier, but the broad question as to whether or not American importers are to be denied

¹³ 141 Pa. Super. 558.

¹⁴ Opinion, pp. 9-10.

the right to pursue, against domestic carriers, the remedies given them in such cases by the Cargomack Amendment.

This case will stand as the first decision on the question. It has not even actually been decided by the Court of Appeals. Completely divergent views are held by two members of that court, as expressed in the majority and dissenting opinions. The concurring judge did not resolve this conflict, but admittedly "not without some slight misgivings", lent his weight to what thus became the majority conclusion, if not the majority view.

There can, in any event, hardly be any doubt as to the importance of this question of interpretation of the Interstate Commerce Act, not only to shippers and holders of such bills of lading, but to the railroads themselves, and to underwriters. The point has not been, and should unquestionably be, settled by this court.

IV

Basis of Jurisdiction

Jurisdiction is invoked under section 1254 of Title 28 of the United States Code.

The original opinions of the Court of Appeals for the Fifth Circuit were filed July 20, 1949; petition for rehearing was filed August 9, 1949; and rehearing was denied August 22, 1949.

Wherefore petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United

States Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said Court of Appeals for the Fifth Circuit, had in the case numbered and entitled on its docket, No. 12,739, *Rudolf Reider, Appellant, vs Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, Appellee*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Court of Appeals for the Fifth Circuit be reversed by this court, and for such other and further relief as this court may deem proper.

EBERHARD P. DEUTSCH.
Counsel for Petitioner.

New Orleans,
October 8, 1949.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1949

No.

RUDOLF REIDER,
Petitioner and Appellant Below,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,
Respondent and Appellee Below.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI

I.

Opinions of Courts Below

The majority, concurring and dissenting opinions of the judges of the Court of Appeals for the Fifth Circuit, annexed to the record, have not as yet, as far as counsel can learn, been reported.

No opinion was rendered by the judges denying the petition for rehearing, or by the judge dissenting from that

ruling. Nor was an opinion rendered by the judge of the District Court for the Eastern District of Louisiana, other than a citation of cases in support of his order.¹

II

Jurisdiction

Jurisdiction is invoked under section 1254 of Title 28 of the United States Code.

The opinions of the Court of Appeals for the Fifth Circuit were filed July 20, 1949. A petition for rehearing was filed August 9, 1949, and rehearing was denied, with one judge dissenting, on August 22, 1949.

As shown in the petition for the writ of certiorari in support of which this brief is filed, the Court of Appeals has decided a significant question of interpretation and application of an important section of the Interstate Commerce Act, and this question has never been, and unquestionably should be, settled by this court.

This case is the first decision by any court on the important question involved. The question has not even actually been decided by the Court of Appeals. Directly opposing views were taken by two members of the court as expressed in the majority and dissenting opinions; and the concurring judge did not effectively resolve this conflict. Admittedly, "not without some slight misgivings", he gave the weight of his concurrence to form a majority con-

clusion, although his reasons differed from those expressed in the "majority" opinion.

Such an important question as is presented here, affecting, as it does, not only the shippers and holders of such bills of lading, but also the railroads themselves, and all underwriters, should not remain in the nebulous state in which the opinion of the Court of Appeals places it, but should be resolved decisively by this court.

III

Statement of the Case

The preceding petition for writ of certiorari contains a "Summary Statement of the Matter Involved",* which is adopted, without repetition, as the "Statement of the Case" of this brief.

IV

Specification of Errors

The court erred in holding that a domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is not subject to the provisions of the Carmack Amendment to the Interstate Commerce Act as to damage to the consignment sustained on its own or connecting rail lines, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the destination of the goods.

* Pp. 2-3 ante.

V**Summary of the Argument****Point A**

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from, and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

Point B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

VI**Argument****Point A**

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from,

and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

The goods in question were transported by an ocean carrier from Buenos Aires, Argentina, to the port of New Orleans where they were delivered in accordance with the ocean bill of lading which designated that port as the destination of the goods.² The domestic carrier subsequently received the property from a new shipper, and issued its through bill of lading³ for carriage of the goods to Boston, over its own and specified connecting rail lines.

The ocean bill of lading was not a through bill of lading to Boston. The port of New Orleans was the terminal point of the carriage under that bill. It contained no provision whatever for the domestic carriage. The space provided in the ocean bill of lading for designation of an ultimate destination in the event of shipment beyond the port of discharge was left blank. The ocean freight was made payable at Buenos Aires and the rail rates were not stated in the bill. As succinctly pointed out by the dissenting judge of the Court of Appeals: "There is no privity between the ship and the Railroad."⁴

The fact that the ocean bill of lading named the First National Bank of Boston as consignee of the goods with notice of arrival to be given to Rudolf Reider in Boston, certainly does not have the effect of making the shipment a through one to that city. The ocean carrier was obli-

² R. 10-12.

³ R. 5-6.

⁴ Opinion, p. 8.

gated to deliver at New Orleans to order of the party named.

As far as the ocean carrier was concerned, its duties and obligations came to an end upon such delivery at the port of New Orleans. Had the owner of the cargo so desired, the shipment could have terminated at New Orleans; and having decided to transport the property to another point, he necessarily had to enter into a new contract of carriage with another carrier. Had not the domestic carrier issued its own bill of lading, the shipment could not have proceeded beyond New Orleans.

As stated by Judge Sibley in the Court of Appeals, the railroad "issued its receipt or bill of lading" for through shipment from Louisiana to Massachusetts "as it was bound to do" under the express terms of the Carmack Amendment itself.⁵

The issuance of the domestic through bill of lading, therefore, constituted a new and independent undertaking on the part of the rail carrier, having no relation whatever to the origin or prior movement of the goods. /

Thus, the domestic carrier could not have issued, much less have intended to issue a bill of lading merely "in furtherance" of, or supplemental to, the original foreign shipment. That shipment effectively ceased at New Orleans before the cargo was delivered to the rail carrier.

Nor can the domestic carrier rely on insertion, in the rail bill of lading, of the phrase "X SS Rio Parana" as

⁵ Opinion, p. 8.

indicating the contrary. The very recitals of the instant contracts of carriage, and the circumstances, outlined above, under which those contracts were issued, refute such a contention.

It is accordingly submitted that the domestic rail bill of lading for shipment from New Orleans to Boston, was entirely separate and distinct from the ocean bill of lading under which the goods arrived at New Orleans from Buenos Aires.

Point B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

The Carmack Amendment does not except a carrier from its provisions merely because the goods it transports began their movement in a foreign country. It may well be that a domestic carrier transporting a shipment to an interior point within the United States under a through bill of lading issued by a prior carrier in a foreign country, designating the interior point within the United States as the destination of the goods, is not governed by the Amendment.

The case of *Alwine vs Pennsylvania R. Co.*⁶ so holds, but that is all it holds. That it does not decide the question

⁶ 141 Pa. Super. 558.

presented here, as contended by the majority of the Court of Appeals, is apparent from the fact that the Pennsylvania court emphasized that it had a "through bill of lading" before it for consideration, itself italicizing the word "through".

Nor does any provision of the Carmack Amendment exempt a carrier from its provisions even if a shipment is "intended" for uninterrupted transportation to a point within the United States. It is not the character of the shipment but the character of the contracts of carriage, which governs applicability of the statute.

It may be conceded that under the decisions of *United States vs Erie R. Co.*⁷ and *Texas & New Orleans R. R. Co. vs Sabine Tram Co.*⁸ relied on by the majority of the court, and other similar cases,⁹ the issuance of the bill of lading by the domestic carrier did not affect the "continuity and foreign character" of the shipment, to subject it to the exclusive right of Congress to regulate it or levy taxes thereon. Nevertheless, the issuance of the new, domestic, bill of lading brought the duties and liabilities imposed by the Carmack Amendment into immediate play. Not one of the cited cases involved the interpretation or applicability of the Carmack Amendment.

The appropriate test here is not different from that universally applied to ordinary interstate shipments to de-

⁷ 280 US 98.

⁸ 227 US 111.

⁹ *Railroad Commission of Louisiana vs Texas & Pacific Railway Company*, 229 US 336; *Illinois Central Railroad Company vs DeFuentes*, 236 US 157; *Western Oil Refining Company vs Lipscomb*, 244 US 346.

termine whether a carrier which transports, under its own bill of lading, property received from a prior carrier, is an initial, or merely a connecting, carrier. The rule has been established firmly that when all of the obligations of a previous contract of carriage of property have terminated, the carrier transporting the property under its own, new and distinct, bill of lading is the receiving carrier within the meaning of the act.¹⁰

In *Mexican Light & Power Co., Limited vs Texas Mexican Ry. Co.*,¹¹ cited by the majority of the Court of Appeals, the original bill of lading called for carriage of the goods from Pennsylvania to the international boundary, and obligated the Texas Mexican Railway, as the terminal carrier, to convey the goods under the original bill of lading to that point. Upon receipt of the goods in Texas, the terminal carrier issued its own bill of lading beyond the boundary. An action was instituted under the Carmack Amendment against that carrier, as the initial carrier, issuer of the bill of lading for transit into Mexico where the goods were damaged.

This court held that the Texas Mexican Railway could act only as terminal carrier to the boundary under the original bill of lading; that it was without authority as such to issue a new bill of lading beyond its terminus; that such new bill of lading was accordingly void; and that the carrier could therefore not be treated as a receiving or initial one.

¹⁰ *Rice vs Oregon Short Line R. Co.*, 33 Idaho 565; *Baltimore & O. R. Co. vs Montgomery & Co.*, 19 Ga. App. 29; *Barrett vs Northern Pac. Ry. Co.*, 29 Idaho 139.

¹¹ 331 U.S. 731.

The cited case clearly has no bearing on the point at issue in the case at bar except in so far as it stands for the proposition that termination of carriage under one bill of lading, and commencement of new and independent carriage under another, as shown by the bills themselves, are the factors determinative of the legal effect of the bills.

In the case at bar, the domestic carrier was not an intervening or connecting carrier, as stated in the majority opinion with the suggestion that this action "attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier". This statement is refuted by both the concurring and dissenting judges.¹² They point out that under the applicable Federal Bills of Lading Act,¹³ plaintiff has the burden of proving good condition at New Orleans so that application of the Carmack Amendment "cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel."¹⁴

In fine, the test of the applicability of the Carmack Amendment to a domestic carrier transporting such a shipment is not whether the shipment originated in a foreign country or was intended for uninterrupted transportation to a point within the United States, but whether the foreign transportation terminated at the United States port, and whether the domestic carrier transported the goods under its own separate, independent, contract of carriage.

¹² Opinion, pp. 6-7, 10-11.

¹³ 49 USC 81.

¹⁴ Opinion, p. 11.

As has been shown,¹⁵ although the instant shipment had its origin in a foreign country, the domestic carrier transported the goods under its own separate, independent, contract of carriage. The carrier accordingly falls within the unequivocal provisions of the Act, for it is one "receiving property for transportation from a point in one State . . . to a point in another State". In the words of the dissenting judge of the Court of Appeals, "This case falls within the words Congress used."¹⁶

¹⁵ Pp // - 14 ante.

¹⁶ Opinion, p. 11.

CONCLUSION

It is accordingly respectfully submitted that for the reasons stated in the petition and in this brief, a writ of certiorari should issue herein, to enable this court to settle the important question of interpretation of the Carmack Amendment to the Interstate Commerce Act, on which there was such sharp division among the judges of the Court of Appeals, and which has not heretofore been settled.

Respectfully submitted,

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

New Orleans,

October, 1949.

DEUTSCH, KERRIGAN & STILES and

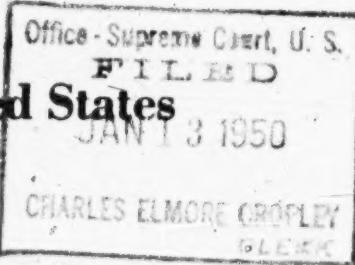
MALCOLM W. MONROE,

Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1949



No. 403

RUDOLF REIDER,

Petitioner,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,

Respondent.

BRIEF IN BEHALF OF PETITIONER

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

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POINT A:

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from, and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States

5

POINT B:

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 403

RUDOLF REIDER,

Petitioner,

versus

**GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,**

Respondent.

BRIEF IN BEHALF OF PETITIONER

I

OFFICIAL REPORT OF OPINIONS BELOW

The majority, concurring and dissenting opinions of the judges of the Court of Appeals for the Fifth Circuit were filed July 20, 1949 (Tr 13 et seq.), and are reported at 176 F2d 13 et seq. Rehearing was denied on August 22, 1949 without opinion (Tr 23). No opinion was rendered by the district judge other than a citation of cases in support of his order (Tr 9-10).

II

BASIS OF JURISDICTION

Jurisdiction of this court was invoked by petition for certiorari under section 1254 of Title 28 of the United States Code. Certiorari was granted on December 5, 1949.

III

STATEMENT OF THE CASE

This suit was brought under the Carmack Amendment to the Interstate Commerce Act,¹ for damage to a shipment of skins and wool. The complaint alleges that the carrier received the consignment in good order and condition at New Orleans, Louisiana, issuing its through bill of lading for carriage of the goods by its own and specified connecting lines to Boston, Massachusetts; that upon arrival at Boston, the shipment was found to have been damaged.²

The bill of lading recites that the goods were received by the railroad at New Orleans from "H. P. Lambert Co. Inc. X SS 'Rio Parana'", consigned in bond to the Collector of Customs at Boston for H. P. Lambert Co., Inc.³

A prior ocean bill of lading⁴ covering the same goods had named Emilio Rosler S. R. L. as the shipper, Buenos Aires as the port of shipment, and New Orleans as the port of discharge. The space provided in the ocean bill

¹ 34 Stat. 593, 49 USC 20(11).

² Tr 2-3.

³ Tr 4-5.

⁴ Tr 7-9.

for ~~an~~ ultimate destination of the goods in event of shipment beyond the port of destination was left blank. The consignee was designated in these words: "Shipped to the order of: The First National Bank of Boston; Notice of arrival should be addressed to (if consigned to Shipper's Order) Rudolf Reider 29 South Street Boston, Mass. U. S. A." The stated ocean freight was payable at Buenos Aires.

Respondent filed a motion to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted,⁵ his contention being that this was a "foreign shipment", having originated in a foreign country, and was, therefore, not subject to the provisions of the Carmack Amendment as to the rail carriage from New Orleans to Boston.

The district court sustained the motion and dismissed the action.⁶ Petitioner appealed from this decree,⁷ and on July 20, 1949, the Court of Appeals for the Fifth Circuit (McCord, J.) affirmed the decree, Judge Hutcheson concurring and Judge Sibley dissenting, each judge handing down a separate opinion.⁸

Judge McCord held that the Carmack Amendment does not apply to an interstate shipment within the United States if the goods originated in a foreign country, the domestic bill of lading being merely supplemental to what is in effect a through foreign shipment, even though the

⁵ Tr. 5.

⁶ Tr. 9-10.

⁷ Tr. 10-12.

⁸ Tr. 13-21.

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foreign bill of lading designated the United States port of entry as the destination of the goods.⁹

Judge Hutcheson, "at long last, but not without some slight misgivings, ranged" himself "with (Judge) McCord". He conceded that the instant case falls within the strict letter of the Carmack Amendment, but relied on decisions which hold that shipments moving in the United States under through bills of lading issued in foreign countries where the shipments originated are governed neither by the Carmack Amendment nor the Federal Bills of Lading Act.¹⁰

Judge Sibley dissented because "the plain, unambiguous words of Section 20(11) of the Interstate Commerce Act as amended . . . uphold this suit"; the railroad being a carrier subject to the Act, "which received this property at New Orleans, a point within a state for transportation to Boston, a point in another state, . . . issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading".¹¹

He called attention to the fact that the ocean carrier had not issued a through bill of lading to Boston, that there was no privity between the ship and the railroad, and that the contract of rail carriage was new, separate and distinct from that for the ocean carriage.¹²

⁹ Tr 14-16.

¹⁰ Tr 16-17.

¹¹ Tr 17-18.

¹² Tr 18-19.

IV**SPECIFICATION OF ERRORS**

The court erred in holding that a domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is not subject to the provisions of the Carmack Amendment to the Interstate Commerce Act as to damage to the consignment sustained on its own or connecting rail lines, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the destination of the goods.

V**ARGUMENT****POINT A**

When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from, and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

The goods in question were transported by an ocean carrier from Buenos Aires, Argentina, to the port of New Orleans where they were delivered in accordance with the ocean bill of lading which designated that port as

the destination of the goods.¹ The domestic carrier subsequently received the property from a new shipper, and issued its through bill of lading² for carriage of the goods from New Orleans to Boston, over its own and specified connecting rail lines.

The ocean bill of lading was not a through bill of lading to Boston. The port of New Orleans was the terminal point of the carriage under that bill. It contained no provision whatever for the domestic carriage. The space provided in the ocean bill of lading for designation of an ultimate destination in the event of shipment beyond the port of discharge was left blank. The ocean freight was made payable at Buenos Aires and the rail rates were not stated in the bill.

The fact that the ocean bill of lading named the First National Bank of Boston as consignee of the goods with notice of arrival to be given to Rudolf Reider in Boston, certainly does not have the effect of making the shipment a through one to that city. The ocean carrier was obligated only to deliver at New Orleans to order of the party named.

The duties and obligations of the carrier came to an end upon such delivery at the port of New Orleans. Had the owner of the cargo so desired, the shipment could have terminated at New Orleans; and having decided to transport the property to another point, he necessarily had to enter into a new contract of carriage with another carrier. Had not the domestic carrier issued its own bill of lading,

¹ Tr 7-9.

² Tr 4-5.

the shipment could not have proceeded beyond New Orleans.

The issuance of the domestic through bill of lading, therefore, constituted a new and independent undertaking on the part of the rail carrier, having no relation whatever to the origin or prior movement of the goods.

POINT B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

The Carmack Amendment does not except a carrier from its provisions merely because the goods it transports began their movement in a foreign country. It may well be that a domestic carrier transporting a shipment to an interior point within the United States under a through bill of lading issued by a prior carrier in a foreign country, designating the interior point within the United States as the destination of the goods, is not governed by the Amendment.

The case of *Alwine vs Pennsylvania R. Co.*³ so holds, but that is all it holds. That it does not decide the question presented here, as contended by the majority of the Court of Appeals, is apparent from the fact that the

³ 141 Pa. Super. 558.

Pennsylvania court emphasized that it had a "through bill of lading" before it for consideration, itself italicizing the word "through".

Nor does any provision of the Carmack Amendment exempt a carrier from its provisions even if a shipment is "intended" for uninterrupted transportation from a point without, to a point within, the United States. It is not the character of the shipment but the character of the contracts of carriage, which governs applicability of the statute.

It may be conceded that under the decisions of *United States vs Erie R. Co.*⁴ and *Texas & New Orleans R. R. Co. vs Sabine Tram Co.*⁵ relied on by the majority of the court, and other similar cases,⁶ the issuance of the bill of lading by the domestic carrier did not affect the "continuity of foreign character" of the shipment, subjecting it to the exclusive right of Congress to regulate it or levy taxes thereon. Nevertheless, the issuance of the new, independent, domestic, bill of lading brought the duties and liabilities imposed by the Carmack Amendment into immediate play. Not one of the cited cases involved the interpretation or applicability of the Carmack Amendment.

The appropriate test here is not different from that universally applied to ordinary interstate shipments to determine whether a carrier which transports, under its own bill of lading, property received from a prior carrier, is an

⁴ 280 US 98.

⁵ 227 US 111.

⁶ *Railroad Commission of Louisiana vs Texas & Pacific Railway Company*, 229 US 336; *Illinois Central Railroad Company vs DeFuentes*, 236 US 157; *Western Oil Refining Company vs Lipscomb*, 244 US 346.

initial, or merely a connecting, carrier. The rule has been established firmly that when all of the obligations of a previous contract of carriage of property have terminated, the carrier transporting the property under its own, new and distinct, bill of lading is the receiving carrier within the meaning of the statute.⁷

The cases⁸ relied on by respondent and the majority of the Court of Appeals, as support for the contention that the shipment in question, having had its origin in a foreign country, could not have become subject to the Carmack Amendment to the Interstate Commerce Act, do not so hold. As was recognized by the dissenting judge,⁹ these cases relate to shipments moving out of the United States under through bills of lading.

The concurring judge in the court below,¹⁰ erroneously relied on the Federal Bills of Lading Act¹¹ by way of analogy, in support of his position that the Carmack Amendment is inapplicable to all shipments originating in foreign countries. True, a bill of lading issued in a foreign country is not governed by the Federal Bills of Lading Act, because it is considered to be a contract subject to the laws of the country in which it was made.¹²

⁷ Rice vs Oregon Short Line R. Co., 33 Idaho 565; Baltimore & O. R. Co. vs Montgomery & Co., 19 Ga. App. 29; Barrett vs Northern Pac. Ry. Co., 29 Idaho 139.

⁸ Missouri Pac. R. Co. vs Porter, 273 US 341; J. H. Hamlen & Sons Co. vs Illinois Cent. R. Co., 212 Fed. 324 (ED Ark.); Best vs Great Northern Ry. Co., 159 Wis. 429; Chicago, M. & St. P. Ry. Co. vs Jewett, 169 Wis. 102.

⁹ Tr. 19.

¹⁰ Tr. 17.

¹¹ 39 Stat. 538, 49 USC 81.

¹² Chesapeake & O. R. Co. vs State Nat. Bank of Maysville, 280 Ky. 444; Williston on Contracts, Vol. IV, Sec. 1116, p. 3194.

But that the rail bill of lading involved in this action was issued in the United States, and is unquestionably controlled by, and subject to, the Federal Bills of Lading Act, was recognized by the concurring judge in the very next paragraph of his opinion.¹³

In *Mexican Light & Power Co., Limited vs Texas Mexican Ry. Co.*,¹⁴ cited by the majority of the Court of Appeals, the original bill of lading provided for carriage of the goods from Pennsylvania to the international boundary, and obligated the Texas Mexican Railway, as the terminal carrier, to convey the goods under the original bill of lading to that point. On receipt of the goods in Texas, the terminal carrier issued its own bill of lading beyond the boundary. An action was instituted under the Carmack Amendment against that terminal carrier, as the initial carrier, issuer of the bill of lading for transit into Mexico where the goods were damaged.

This court held that the Texas Mexican Railway could act only as terminal carrier to the boundary under the original bill of lading; that it was without authority as such to issue a new bill of lading beyond its terminus; that such new bill of lading was accordingly void; and that the carrier could therefore not be treated as a receiving or initial one.

The cited case clearly has no bearing on the point at issue in the case at bar, except in so far as it stands for the proposition that termination of carriage under one bill of

¹³ Fr. 17.

¹⁴ 331 U.S. 731.

lading, and commencement of new and independent carriage under another, as shown by the bills themselves, are the factors determinative of the legal effect of the bills.

In the case at bar, the domestic carrier was not an intervening or connecting carrier, as stated in the majority opinion with the suggestion that this action "attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier". This statement is refuted by both the concurring and dissenting judges.¹⁵ They pointed out that under the applicable Federal Bills of Lading Act,¹⁶ plaintiff had the burden of proving good condition at New Orleans so that application of the Carmack Amendment "cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel."¹⁷

In fine, the test of the applicability of the Carmack Amendment to a domestic carrier transporting such a shipment, is not whether the shipment originated in a foreign country, or was intended for uninterrupted transportation to a point within the United States, but whether the transportation under the foreign bill of lading terminated at the United States port, and whether the domestic carrier transported the goods under its own separate, independent, contract of carriage.

¹⁵ Tr. 17, 20.

¹⁶ 39 Stat. 538, 49 USC 81.

¹⁷ Tr. 20.

As has been shown, although the instant shipment had its origin in a foreign country, the domestic carrier transported the goods under its own separate, independent, contract of carriage. The carrier accordingly falls within the unequivocal provisions of the Act, for it is one "receiving property for transportation from a point in one State . . . to a point in another State". In the words of the dissenting judge of the Court of Appeals: "This case falls within the words Congress used."¹⁸

CONCLUSION

It is accordingly respectfully submitted that the decision of the Court of Appeals for the Fifth Circuit should be reversed, and the case remanded for trial on its merits.

Respectfully submitted,

EBERHARD P. DEUTSCH,
Counsel for Petitioner.

DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

New Orleans,
January, 1950.

This is to certify that copies of this brief have been served on opposing counsel on January . . ., 1950.

APPENDIX**The Carmack Amendment to the Interstate Commerce Act,
49 USC 20(11).**

Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder

of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void. . .

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OCTOBER TERM, 1949

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CHARLES ELMORE CROPLIN
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No. 43

RUDOLF REIDER,

Petitioner,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,

Respondent.

BRIEF IN BEHALF OF RESPONDENT

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1, Sec. 393	4
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SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1949

No. 403

RUDOLF REIDER,

Petitioner,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,
Respondent.

BRIEF IN BEHALF OF RESPONDENT

I.

OFFICIAL REPORT OF OPINIONS BELOW

The majority, concurring and dissenting opinions of the judges of the Court of Appeals for the Fifth Circuit were filed July 20, 1949 (Tr. p. 13 et seq.), and are reported at 176 Fed. 2d 13, et seq. Rehearing was denied on August 22, 1949 without opinion (Tr. p. 23). No opinion was rendered by the district judge other than a citation of cases in support of his order (Tr. pp. 9-10).

II.

BASIS OF JURISDICTION

Jurisdiction of this Court was invoked by petition for certiorari under Section 1254 of Title 28 of the United States Code. Certiorari was granted on December 5, 1949.

III.

STATEMENT OF THE CASE

Rudolf Reider brought this action against Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, under the Carmack Amendment * to the Interstate Commerce Act, for damage to a shipment of twenty-one cases and twelve barrels of skins and wool.¹

The bill of lading issued by the respondent,² annexed to and made part of the complaint, showed that the shipment was received at New Orleans, Louisiana, August 10, 1944, from H. P. Lambert Co., Inc. from the steamship Rio Parana and was consigned in bond to the Collector of Customs at Boston, Massachusetts for the shipper. By stipulation between counsel,³ ocean Bill of Lading No. 42 covering the shipment of 16 cases of sheepskins from Buenos Aires, Argentina, to New Orleans, by the steamship Rio Parana, was made part of the record.⁴ It appeared thereby, that the goods were shipped by Emilio

* The Carmack Amendment as amended and presently in force is quoted in full in the Appendix, pp. 29-32.

¹ Tr. pp. 2, 3.

² Tr. pp. 4, 5.

³ Tr. pp. 6, 7.

⁴ Tr. pp. 7-9.

Rosler, S. R. L. on the ship Rio Parana, to the order of The First National Bank of Boston, notify Rudolf Reider, 39 Third Street, Boston, Massachusetts, U. S. A. The port of shipment was Buenos Aires and the port of discharge of the ship, New Orleans. It was further stipulated between counsel⁵ that the remaining cases and barrels of skins and wool involved in this suit were shipped from Buenos Aires, Argentina, to New Orleans, aboard the steamship Rio Parana, under ocean bills of lading containing the same provisions, terms and conditions as Bill of Lading No. 42.

The complaint alleged⁶ that on arrival at destination the shipment was found to be damaged by water and stained and moldy. Recovery was sought for the amount of \$2,000.00.

Respondent moved to dismiss the action on the ground that the complaint failed to state a claim upon which relief could be granted.⁷ The basis of the motion was that the shipment was not one covered by the Carmack Amendment as the shipment originated in a non-adjacent foreign country, and moved to its ultimate destination pursuant to the persisting intention of its owner. Judge Borah, the District Judge (recently made a member of the Court of Appeals for the Fifth Circuit), sustained the motion and dismissed the action.⁸ On appeal to the Court of Appeals for the Fifth Circuit, the dismissal of the action was affirmed.⁹

⁵ Tr. pp. 6, 7.

⁶ Tr. pp. 2, 3.

⁷ Tr. p. 5.

⁸ Tr. pp. 9, 10.

⁹ Tr. p. 21.

IV.

ARGUMENT**A.**

The issuance of a bill of lading by a domestic rail carrier does not affect the continuity of a shipment that originated in a foreign country and no claim thereon may be made under the Carmack Amendment.

This action was brought under the Carmack Amendment. It will only lie if that Act is applicable, as there is no allegation that the damage occurred on respondent's line, nor is the necessary jurisdictional amount claimed. We contend that recovery cannot be had under the Carmack Amendment because the record affirmatively shows that there was but one continuous through shipment from its inception in a non-adjacent foreign country to its ultimate destination at Boston, and that such shipments are not covered by the express provisions of the Act.

It is well settled¹ and petitioner concedes,² that the Carmack Amendment does not cover transportation from a non-adjacent foreign country. Petitioner contends, however, that the rail carriage in the instant case should be disassociated from the ocean shipment. An analysis discloses that the only possible bases for this contention, are:

(a) That petitioner here did not intend that the shipment should move from Buenos Aires to Boston (or that his intention in this regard is unimportant);

¹ Roberts, *Federal Liabilities of Carriers*, 2nd Ed., Vol. 1, Sec. 393.

² Petitioner's brief p. 7.

- (b) That the physical unloading from the ship and loading into the freight cars would break the continuity of the shipment; or
- (c) That the issuance of the bill of lading by respondent here would have that effect.

However, each of these problems has been considered heretofore by your Honors and decided favorably to respondent.

In *Baltimore & Ohio Southwestern Railroad Company v. W. H. Settle, et al.*,³ the question of the intention of the shipper arose in considering a shipment of lumber from outside Ohio, to a point in Ohio, which was shipped a few days later to another point in Ohio on a new bill of lading. This Court held that the intention of the shipper as carried out, determined "as a matter of law" the essential character of the shipment, holding that the second movement was a part of a continuing interstate shipment.

In the case at bar, the intention of the shipper apparently never varied from the inception of the shipment at Buenos Aires on the ocean bill of lading,⁴ from which it appeared that both the consignee and the owner, petitioner here, were in Boston. The stipulation⁵ shows that the same goods were forwarded by rail "in bond" to the Collector of Customs at Boston. The bill of lading⁶ issued by respondent stated that the shipment was from the same steamship "Rio Parana" named in the ocean bill. The

³ 260 U. S. 166, 43 S. Ct. 28, 67 L. Ed. 189.

⁴ Tr. pp. 7-9.

⁵ Tr. pp. 6, 7.

⁶ Tr. pp. 4, 5. See also Stipulation and Addition to Record.

complaint alleges⁷ that petitioner (named in the ocean bill, as noted above) was the owner of the goods being carried.

Petitioner's intention that the carriage should continue all the way to Boston is evidenced by the bills of lading, the stipulation, the bill of complaint, by the actual movement to Boston, and by the fact that the shipment was not submitted to the customs officials in New Orleans, the port of entry.

In response, petitioner states that he might have decided to stop the shipment in New Orleans. This argument would seem to carry little weight, since the owner of a shipment always has the right of stoppage in transitu at any intermediate point through which goods might pass, even when transported on a single bill of lading.⁸

Had petitioner stopped his shipment in New Orleans, he might conceivably have argued that his intention was not to send it on to Boston. However, as the Court said in the Settle case " * * * the intention, as it was carried out, determined, as a matter of law, the essential nature of the movement * * * "

We respectfully submit that the essential nature of the movement in the instant case was a through shipment from a non-adjacent foreign country, since the ocean and rail portions are considered conjointly as a matter of law. We further submit that the Carmack Amendment which by its terms does not apply to shipments from non-

⁷ Tr. pp. 2, 3.

⁸ 9 Am. Jur. verbo Carriers §§530, 572.

adjacent foreign countries, is therefore not applicable to any single portion of the transportation here from Buenos Aires to Boston.

We then come to the question of whether the effect of physically unloading the shipment from the steamship and loading it into the cars for the rail transportation could result in there being two shipments instead of a single continuous one. In *Southern Pacific Terminal Company v. Interstate Commerce Commission*,⁹ shipments from points in Texas and elsewhere to Galveston, Texas, were unloaded from the freight cars onto the wharves and were actually processed before being loaded into steamships for movement to foreign countries. This Court held that the entire shipment moved in foreign commerce, including the transportation within the State of Texas, for as was said in that opinion:

". . . It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose." (Emphasis ours.)

If any further authority is necessary in support of this statement, see *Texas & New Orleans Railroad Company v. Sabine Tram Company*,¹⁰ *Railroad Commission v. Texas & Pacific Railway Company*,¹¹ *Illinois Central Railroad*

⁹ 219 U. S. 498, 31 S. Ct. 279, 55 L. Ed. 310.

¹⁰ 227 U. S. 111, 33 S. Ct. 229, 57 L. Ed. 442.

¹¹ 229 U. S. 386, 33 S. Ct. 837, 57 L. Ed. 1215.

*Co. v. De Fuentes;*¹² and *Railroad Commission of Ohio v. Worthington.*¹³

The only other possible contention, and apparently the one being urged most strongly by petitioner, is that the issuance of the bill of lading by respondent, would in itself, have the effect of dividing the movement into a rail shipment entirely distinct and separate from that by water, so that the shipper would have the right to invoke the provisions of the Carmack Amendment as to the second portion thereof. However, in *Western Oil Refining Company v. Lipscomb*,¹⁴ this Court specifically held that it was not the question of whether a local or through bill of lading was involved, but the character of the shipment that was determinative.

It seems to be well settled that where a shipment was made in two stages, with separate bills of lading covering each segment of the movement, both are indivisible components of the whole. See the language quoted *supra*, from the *Southern Pacific Terminal* case, the holdings in the *Settle*, *Lipscomb* and *Sabine Tram Company* cases, *supra*, and *Baer Brothers Mercantile Co. v. Denver & R. G. R. Co.*,¹⁵ *Swift & Company v. United States*,¹⁶ and *Railroad Commission v. Texas & Pacific Railroad Company*.¹⁷ The rule has been reiterated so frequently, that the opinion of the Court in the *Lipscomb* case stated:

“As this court often has said, it is the essential character of the commerce, not the accident of local

¹² 236 U. S. 157, 35 S. Ct. 275, 59 L. Ed. 517.

¹³ 225 U. S. 101, 32 S. Ct. 653, 56 L. Ed. 1004.

¹⁴ 244 U. S. 346, 37 S. Ct. 623, 61 L. Ed. 1181.

¹⁵ 233 U. S. 479, 34 S. Ct. 641, 58 L. Ed. 1055.

¹⁶ 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518.

¹⁷ *Supra*, n. 11.

or through bills of lading, that is decisive. Southern P. Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. Rep. 279; Railroad Commission v. Worthington, 225 U. S. 101, 56 L. Ed. 1004, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. v. Sabine Tram Co., 227 U. S. 111, 57 L. Ed. 442, 33 Sup. Ct. Rep. 229; Railroad Commission v. Texas & P. R. Co., 229 U. S. 336, 57 L. Ed. 1215, 33 Sup. Ct. Rep. 837; Chicago, M. & St. P. R. Co. v. Iowa, 233 U. S. 334, 343, 58 L. Ed. 988, 992, 34 Sup. Ct. Rep. 592; South Covington & C. Street R. Co. v. Covington, 235 U. S. 537, 545, 59 L. Ed. 350, 353, L. R. A. 1915F, 792, P. U. R. 1915A, 231, 35 Sup. Ct. Rep. 158." (Emphasis ours.)

In the Settle case where two bills of lading had issued, it was said that "through billing" is immaterial. In the Lipscomb case, that it is the character of the commerce and not whether it was "local or through bills of lading" that determined the question, and in the Southern Pacific Terminal case, that it made "no difference therefore that the shipments of the products were not made on through bills of lading."

Consequently, we find this rule followed consistently whether the question was one of the imposition of taxes upon the commerce, of the rates to be applied, or of regulations by local bodies. Furthermore, in the case of *United States of America v. Erie Railroad Company*,¹⁸ this Court considered a shipment moving in import from a foreign country, and thence transshipped on new bills of lading to an inland point by rail. Factually, the situation is much akin to that in the instant case.

¹⁸ 280 U. S. 98, 50 S. Ct. 51, 74 L. Ed. 187.

In a well-reasoned opinion in the *Erie* case, Mr. Justice Brandeis said:

"But the nature of the shipment is not dependent upon the question when or to whom the title passes. Pennsylvania R. Co. v. Clark Bros. Coal Min. Co., 238 U. S. 456, 465, 466, 59 L. ed. 1406, 1410, 1411, 35 Sup. Ct. Rep. 896. It is determined by the essential character of the commerce. Baltimore & O. S. W. R. Co. v. Settle, 260 U. S. 166, 170, 67 L. ed. 189, 192, 43 Sup. Ct. Rep. 28. It is not affected by the fact that the transaction is initiated or completed under a local bill of lading which is wholly intrastate (Railroad Commission v. Worthington, 225 U. S. 101, 108-110, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; Texas & N. O. R. Co. v. Sabine Tram Co., 227 U. S. 111, 57 L. ed. 442, 33 Sup. Ct. Rep. 229; Hughes Bros. Timber Co. v. Minnesota, 272 U. S. 469, 71 L. ed. 359, 47 Sup. Ct. Rep. 170), or by the fact that there may be a detention before or after the shipment on the local bill of lading (Carson Petroleum Co. v. Vial, 279 U. S. 95, 73 L. ed. 626, 49 Sup. Ct. Rep. 292). The findings of the Commission, that the broker acts only as agent and that from the time that the pulp is put aboard the steamer there is a continuing intent that it should be transported to Garfield, ought to have been accepted by the District Court as conclusive, since there was ample evidence to sustain it. Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268, 70 L. ed. 941, 46 Sup. Ct. Rep. 500; Virginian R. Co. v. United States, 272 U. S. 658, 71 L. ed. 463, 47 Sup. Ct. Rep. 222. The rail transportation is in fact a part of foreign commerce." (Emphasis ours.)

Petitioner attempts to brush aside the *Erie* and *Sabine Tram Company* cases, and presumably the cases cited above, by contending that they relate only to Section 1 of the Interstate Commerce Act, and not to the Carmack Amendment. Such a contention not only does violence to the well-recognized rules of statutory interpretation, but also disregards the plain unambiguous language used in the cited cases.

Petitioner does not explain how he hopes to avoid the effect of the last sentence quoted above from the *Erie* case. For if the rail transportation in that case, the facts of which are closely analogous to those here, "is in fact a part of foreign commerce", then the rail transportation in the instant case is but a continuation of the ocean carriage and respondent is not an initial carrier. Despite the breaks in the continuity of shipments, the existence of separate bills of lading, the lapse of time at the points of transshipment (some even being for a sufficient time to actually process goods), the decision in each case has been based upon the essential character of the shipment.

If there is but one shipment for the purpose of determining what regulations shall apply, as said in *Railroad Commission v. Texas & Pacific Railroad Company, supra*, it would seem to follow that in the instant case there is but one shipment insofar as the applicability of the Carmack Amendment is concerned. And if there is a break between the rail and ocean carriage in the continuity of the shipment, sufficient to permit processing of the goods, as there was in *Southern Pacific Terminal Company v. Interstate Commerce Commission, supra*, and the shipment

was held to be but one movement, so that the commission could order the elimination of unfair preferences, we respectfully submit that in the instant case, with hardly an interruption, the same rule should apply.

Furthermore, if in the *Erie* case, a rail movement entirely within the State of New Jersey, on one bill of lading, after an ocean voyage on a separate bill of lading, is a single shipment, then it seems logical, that in construing the Carmack Amendment's applicability to the case at bar, the same rule should be invoked.

These analogies run on and on. Without reiterating the facts in each, we refer your Honors to the *Worthington*, *Sabine Tram*, and *Settle* cases, *supra*, as well as *Oregon-Washington R. & Nav. Co. v. Strauss & Co., Inc.*,¹⁹ *Texas & P. Ry. Co. v. Langbehn*,²⁰ *Houston Direct Nav. Co. v. Insurance Co. of North America*,²¹ *Anderson, Clayton & Co. v. Wichita Valley Ry. Co.*,²² and *McFadden, et al. v. Alabama Great Southern R. Co.*²³

We, therefore, respectfully submit that the continuity of the instant shipment, appearing as it does from the record in this case, governs its character, and that under the authorities cited above, the bill of lading issued by respondent was simply supplemental to the ocean bill, and neither interrupted nor affected the continuity or the foreign character of the shipment so as to make the

¹⁹ 73 F. 2d 912, cert. den. 274 U. S. 723, 55 S. Ct. 551, 79 L. Ed. 1255.

²⁰ 158 S. W. 244.

²¹ 32 S. W. 889.

²² 15 F. Supp. 475, 92 F2d 104, cert. den. 302 U. S. 747, 58 S. Ct. 265, 82 L. Ed. 578.

²³ 241 Fed. 562.

Carmack Amendment apply to that segment of the shipment that began on respondent's lines.

POINT B.

The Carmack Amendment does not permit an action against a carrier issuing a second bill of lading covering the second portion of a continuous shipment, merely because of the issuance of such bill of lading.

In support of its holding on this point, the Court of Appeals relied in part upon the cases of *Mexican Light & Power Co. v. Texas-Mexican Railway Co.*²⁴ *Missouri Pacific Railroad Company v. Porter*,²⁵ and *A. Russo & Co. v. United States*.²⁶ Petitioner contends that the Texas-Mexican case has no bearing upon the point at issue, except in one minor particular. He thereby adopts the position of the dissenting judge of the Court of Appeals, who said that the case "rules nothing as to a reverse shipment originating in Mexico or any other foreign country for which Texas-Mexican Ry. Co. might at Laredo give its bill of lading for transportation to a point in Pennsylvania."

It is true, of course, that this case is not direct authority in support of respondent's position, for the reason that the movement in question was not from a non-adjacent foreign country, but was to an adjacent foreign country, where under certain circumstances, the Carmack Amendment might be applicable. However, it cannot be dismissed

²⁴ 331 U. S. 731, 67 S. Ct. 1440, 91 L. Ed. 1779.

²⁵ 273 U. S. 341, 47 S. Ct. 383, 71 L. Ed. 672.

²⁶ 40 F. 2d 39.

from consideration here, as petitioner attempts, for it directly holds that the Texas Supreme Court properly found that the bill of lading issued by the Texas-Mexican "did not evidence any new and independent undertaking, when judged by the rigid requirements by which bills of lading are valid under the Carmack Amendment."

As in the *Texas-Mexican* case, there is no evidence in the record here that any consideration was paid to respondent for the issuance of its bill of lading. More important from respondent's standpoint is the holding that the Pennsylvania Railroad was not displaced as the initial carrier by the issuance of the new bill of lading by the *Texas-Mexican*.

Judge McCord cited *Missouri Pacific Railroad Company v. Porter*,²⁷ *A. Russo & Co. v. United States*,²⁸ and other cases supporting his holding²⁹ that there "is persuasive authority from both Federal and State courts to the effect that shipments to and from non-adjacent foreign countries were not intended to be governed by the Carmack Amendment, and that actions to enforce liability against a domestic carrier for such foreign shipments could not be brought thereunder."

Petitioner professes to see no connection between these cases and the instant one, saying that they relate to shipments moving out of the United States under through shipments. Such an approach, however, sidesteps rather than answers the question. It is hardly to be contended

²⁷ *Supra*, n. 25.

²⁸ *Supra*, n. 26.

²⁹ Tr. p. 15.

that the rule depends upon the direction of the movement. In *Galveston H. & S. R. Co. v. Woodbury*,³⁰ Mr. Justice Brandeis in referring to the Carmack Amendment, said: "The test of the application of the act is not the direction of the movement, but the nature of the transportation as determined by the field of the carrier's operation."

Moreover, in the *Russo* case, the shipment actually moved in import by ocean carrier and thence by rail. Consequently, there was an import rather than an export movement.

The only remaining point of difference, which petitioner claims to exist between the case at bar and the *Porter* case, is that in the latter, there was a through bill of lading. An analysis of the facts discloses that in this, he is not correct. In the *Porter* case, the shipper delivered to the rail carrier at Earle, Arkansas, 75 bales of cotton to be shipped to Liverpool. Mr. Justice Butler said that the "carrier issued to the shippers an export bill of lading in two parts; the first covered the inland haul from Earle to Brunswick, Georgia, designated as port A, and the second covered the ocean carriage from Brunswick to Liverpool designated as port B." It was held that the Carmack Amendment did not apply, since shipments moving to non-adjacent foreign countries partly by rail and partly by water are not within the scope of the act.

We refer your Honors to the transcript in the *Porter* case, wherein the bill of lading under consideration there, is set forth.³¹ It will be noted that the bill was in the form approved by the Interstate Commerce Commission.³²

³⁰ 254 U. S. 357, 41 S. Ct. 114, 65 L. Ed. 301.

³¹ Transcript in the *Porter* case, pp. 9, 10.

³² Appendix D, 64 I. C. C. 347, 355.

That bill of lading has been modified slightly in subsequent opinions,³³ but not in any particular, important here. As your Honors will note, the bill of lading under consideration in the *Porter* case, was one executed "on behalf of carriers severally and not jointly", the first part of the bill applying solely to the rail transportation within the United States, and the second part applying solely to the ocean transportation. The obligation of the rail carrier was, therefore, no greater than if a purely inland bill of lading had been used with a notation "For Export". In such a case, the rail carrier is liable for no obligation whatever for any loss or damage occurring after delivery at shipside.³⁴

Such being the case, it necessarily follows that the bill of lading issued by respondent, in the case at bar, showing that the shipment moved in import from an ocean voyage is subject to the same construction, and by the same token, any claim made thereon, is likewise not subject to the effect of the Carmack Amendment. The *Porter* case, is therefore, we respectfully submit, clear, definite authority supporting respondent's position.

There are, moreover, quite a number of cases decided by the courts of last resort in several states, in each of which the facts were more nearly similar to the facts of the case at bar than they were even in the *Porter* case. Illustrative of such decisions are the four that we shall now discuss.

³³ 66 I. C. C. 687; 80 I. C. C. 305; 156 I. C. C. 188; 235 I. C. C. 63.
³⁴ *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C. 666, 670.

In *Fahey et al. v. Baltimore & Ohio Railroad Company*³⁵ the Carmack Amendment was invoked to recover from a carrier issuing a bill of lading for grain to be shipped from inland points to Baltimore destined for export. In holding that the Carmack Amendment was not applicable because the shipment was moving in foreign commerce, the Maryland Supreme Court said:

"The Supreme Court of the United States, in a series of decisions, has settled the principle by which a question like the present one should be controlled. The intention as to destination with which the goods are delivered and accepted for conveyance by the carrier is held to be the determining factor in such a problem. Whether or not in a particular case the bill of lading discloses that the shipment is for export, if that was the real design with which it was started on the course of its transportation, and if it would proceed to a foreign destination as the normal result of the movement thus originated, it must be regarded and classified as foreign commerce for the purposes of such an inquiry as the one with which we are now concerned."

Although the rail bill of lading merely recited that the shipment was for export and separate ocean bills were executed to cover the portion of the carriage by water, the Court, after citing and discussing the decisions of this Court noted above, held the Carmack Amendment inapplicable, saying:

"The facts of the case, in our judgment, bring it clearly within the principle of the decisions of the Supreme Court to which we first referred, and we,

therefore, hold that the shipments of grain, for the loss of which additional compensation is sought to be recovered in this suit, were in course of transportation to a non-adjacent foreign country, at the time of their destruction, and that the measure of damages stipulated in the bills of lading is not contrary to the provisions of the Federal statutes but is a valid limitation of the carrier's liability for such a loss."

In *Barber v. Missouri Pacific R. Company*³⁶ the question before the Kansas Supreme Court was whether a rail shipment of two cars of wheat moving under a bill of lading from Kansas to Galveston, and which bill of lading stated that the wheat was to be exported, was subject to the Carmack Amendment. It appeared that no bill of lading had been issued to cover the ocean carriage, yet the Court held that the Carmack Amendment was not applicable, considering that the rail portion of the shipment was but an incident in the entire continuous transportation contemplated to the foreign country.

In *Lesser-Goldman Cotton Co. v. Missouri Pacific R. Company*,³⁷ the Supreme Court of Missouri had a similar question and reached a similar result. One Wier issued a bill of lading as agent of the Missouri Pacific for a shipment of cotton from Pine Bluff, Arkansas to New Orleans and at the same time, Wier as agent for a steamship line, issued a bill of lading for the carriage of the cotton from New Orleans to Liverpool. Despite the fact that the cotton was destroyed while in the possession of the Missouri Pacific the Court held that the Carmack Amendment did

³⁶ 118 Kans. 651, 236 P. 859.

³⁷ 321 Mo. 714, 12 S. W. 2d 485.

not apply, following the decision in the case of *Missouri Pacific R. Company v. Porter*, *supra*, since the shipment was to be considered as a whole, and was destined for foreign shipment. This Court then declined to issue a writ of certiorari in this case.³⁸

Following the three cases just above mentioned, the Supreme Court of Illinois was called upon to consider the case of *Lino et al. v. The Northwestern Pac. R. R. Co.*³⁹ There an initial rail carrier had moved the freight under its bill of lading and delivered it to the defendant carrier. The defendant carrier thereafter issued its own bill of lading to the ultimate destination. The first bill of lading disclosed on its face that there was to be a subsequent movement of the freight, but only contracted for the carriage to the point where delivery was made to the defendant, the second carrier, to which the car was transferred intact. After citing the *Sabine Tram Company* and *Settle* cases, *supra*, the Court held that the first carrier was the initial carrier and that, even though the defendant had issued a new bill of lading, action could not be brought against it under the Carmack Amendment.

There were similar holdings in the case of *Houston East & West Texas Ry. Co. v. Inman, Akers & Inman*,⁴⁰ and in *Chicago M. & St. P. R. R. v. Jewett*.⁴¹ To the same effect, although the Carmack Amendment was not specifically at issue, was the decision of this Court in *Atchison, Topeka & S. F. R. Co. v. Harold*,⁴² as well as *McFadden, et al. v.*

³⁸ 279 U. S. 855, 49 S. Ct. 351, 73 L. Ed. 997.

³⁹ 332 Ill. 93, 163 N. E. 316.

⁴⁰ 63 Tex. Civ. App. 556, 184 S. W. 275.

⁴¹ 169 Wis. 102, 171 N. W. 757.

⁴² 241 U. S. 371, 368 S. Ct. 665, 60 L. Ed. 1050.

Alabama Great Southern R. Co.,⁴³ *State of Texas v. Anderson Clayton & Co., et al.*,⁴⁴ and *Texas & P. Ry. Co. v. Langbehn*.⁴⁵

The case at bar is, therefore, not *res nova*, as petitioner seeks to imply. While he makes no direct statement that it is, he cites as his only affirmative authority three cases that we submit are not at all applicable, namely, *Rice v. Oregon Short Line R. Co.*,⁴⁶ *Barrett v. Northern Pac. Ry.*,⁴⁷ both from Idaho, and *Baltimore & O. R. Co. v. Montgomery & Co.*⁴⁸ The distinction between those cases and the instant case is that in none of the former was there ever an intention, at the inception of the shipment, to transport it to its ultimate destination.

In the *Rice* and *Barrett* cases, the prior bill of lading only called for a shipment to the point from which it was subsequently rerouted. In the other, the *Baltimore and Ohio* case, the shipment moved to its original destination on one bill of lading, whence it was diverted. The original bill of lading, after the completion of the shipment, was altered to show the new destination and thereafter the shipment moved thereon.

We, therefore, respectfully submit that the facts in the cases cited by the petitioner are not apposite to the case at bar, while the *Porter* case, decided by this Court, is affirmative authority for respondent's position. More-

⁴³ *Supra*, n. 23.

⁴⁴ 92 F. 2d 104, cert. den. 302 U. S. 747, 58 S. Ct. 265, 82 L. Ed. 578.

⁴⁵ *Supra*, n. 20.

⁴⁶ 33 Idaho 565, 198 Pac. 161.

⁴⁷ 29 Idaho 139, 157 Pac. 1016.

⁴⁸ 19 Ga. App. 29, 90 S. E. 740.

over, the *Fahey, Barber, Lesser-Goldman, Lino* and other cases cited above by respondent are persuasive authority, not only because of the similarity of their facts to the instant case, but also because they have not provoked any amendment to the Act, indicating an apparent satisfaction with the provisions of the Act as it is and has remained for many years.

The Second Circuit Court of Appeals said in *Cudahy Packing Co. v. Munson S. S. Line*⁴⁹ quoting in part from a decision by this Honorable Court:

"Amendment after amendment has been made to the Interstate Commerce Act in its long history. Again and again Congress has extended its scope under the broad power to regulate interstate and foreign commerce. In such circumstances there is the strongest ground to believe that what Congress 'passed * * * by * * * it was satisfied to leave * * * to the Interstate Commerce Commission and the common law.' *Gooch v. Oregon Short Line R. R. Co.*, *supra*, at page 25 (42 S. Ct. 193)."

And as the Texas Court of Civil Appeals said in *Houston East & West Texas Ry. Co. v. Inman, et al.*,⁵⁰ the rule making an initial carrier responsible: "* * * is an arbitrary one, and can only be upheld upon the grounds of public necessity, and it is entirely reasonable to conclude that Congress did not deem it wise to extend this rule so as to make the domestic carrier liable for loss occasioned by the negligence of a foreign steamship company or other foreign carrier, because the right of the domestic carrier

⁴⁹ 22 F. 2d 878, cert. den. 277 U. S. 586, 48 S. Ct. 483, 72 L. Ed. 1000.

⁵⁰ *Supra*. n. 40.

to be reimbursed for any amount paid by it by reason of the default of a connecting carrier would be much more difficult of enforcement against a foreign carrier than it would if the shipment was merely interstate."

As suggested in *Southern P. R. Co. v. Gonzalez*,⁵¹ "the Interstate Commerce Act could have provided that in case a shipment originated in a foreign country, the first carrier within the United States should be considered as the initial carrier, and have imposed upon it the liability set forth in the Carmack Amendment, . . ." That it does not so provide, is, we respectfully submit, ample evidence that Congress did not intend that it should.

The Court of Appeals quoted in its majority opinion from *Alwine v. Pennsylvania R. Co.*⁵² to the effect that since the Carmack Amendment is a radical departure from the common law, its effect should not be extended beyond its plain meaning and its evident purpose. In the *Alwine* case, the Court also said:

" . . . it is only fair to assume that Congress would have extended the act so as to cover imports from foreign adjacent countries had they deemed that the public interest required it and it was proper so to do." (Italics ours.)

* * * * *

"It cannot be contended that the Carmack Amendment took effect at the boundary between the United States and adjacent foreign territory for the amendment covers the entire movement. . . ." (Emphasis ours.)

⁵¹ 48 Ariz. 260, 61 P. 2d 377.

⁵² 141 Pa. S. 558, 15 A. 2d 507.

A comparison of the provisions of the first Cummins Amendment with Section 1 of the Act discloses that the language in the former making it applicable to no foreign shipments other than those moving TO adjacent foreign countries, is found in Section 1 of the Act⁵³ as it read when the first Cummins Amendment⁵⁴ was adopted. Research ~~discusses~~ no discussion either in Congress or its Committees, relating to the reasons for such limitation. Yet when the history of the Carmack and Cummins Amendments is considered, the entire perspective becomes clear.

Judge Hutcheson, in his concurring opinion,⁵⁵ considered the historical aspect of the statutes and their proper interpretation. Petitioner refers to the slight misgivings mentioned by Judge Hutcheson, in his opinion, leaving the impression that there was a note of indecision remaining in the judge's mind. That such is not the case is self-evident from the statement thereafter that the slight misgivings "entirely disappear when consideration is given to the history of the section and the uniform course of decision as to its non-applicability to shipments originating in foreign countries * * *." As stated, the only doubt arose not "from the over-all picture of the case", but from the "artful" use by the dissenting judge of a few words from the statute "construed, as he wants them to be, by themselves apart from their context in the section as a whole, as amended, and without regard to its long and informative judicial and legislative history."

⁵³ Appendix, pp. 33, 34.

⁵⁴ Appendix, pp. 35, 36.

⁵⁵ Tr. pp. 16, 17.

It is not strange that petitioner utilizes the ingenious device of seizing upon a few words as the foundation of his argument for which he cites no other supporting authority.

We respectfully submit, however, that Judge Hutcheson is correct and that a statute should not be interpreted by reference to a few selected words, without regard to the whole and, particularly not when it has been subjected to interpretation and amendment over a long period of time. The Interstate Commerce Act has been law in this country for over sixty years, the Carmack Amendment for over forty. The several amendments to the latter have been passed to eliminate points of weakness. And, we respectfully submit, if Congress had intended that the act should apply to a shipment such as in the case at bar, it would have said so.

POINT C.

Even if it were possible for an action to be maintained under the Carmack Amendment by a shipper who obtains a bill of lading from a carrier, covering the second portion of a through shipment, petitioner has placed himself in a position where he is unable to do so.

We submit that we have adequately shown that the Carmack Amendment is not applicable to a shipment moving as did the one in the instant case. We further contend that petitioner can not recover in the case at bar in any event.

Petitioner alleged that when the shipment was delivered to respondent, it was "in good condition." On the other hand, he made part of his complaint,⁵⁶ documents⁵⁷ which not only cast doubt upon the correctness of this allegation, but affirmatively show he did not know the condition of the shipment.

The bill of lading⁵⁸ issued by respondent shows that the condition of the contents of the packages delivered to it were unknown. The description of the shipment in the complaint⁵⁹ and the rail bill of lading⁶⁰ shows that the entire shipment was in containers. The ocean bill of lading⁶¹ and the stipulation⁶² evidences that the same merchandise that moved from Buenos Aires was delivered to respondent. Consequently, petitioner affirmatively shows in the record that he did not know the condition of the goods at the time they were delivered to respondent.

As Judge McCord said in his majority opinion,⁶³ the Carmack Amendment "was not intended to apply where as here, a shipper brings an action not against the initial foreign carrier but against an intervening domestic carrier and attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier." And as he further said: "In such instance if the intervening carrier were held liable, he might have no enforceable cause of action for recovery of his damages against the foreign carrier if the latter were actually responsible."

⁵⁶ Tr. pp. 2, 3.

⁵⁷ Tr. pp. 4-9.

⁵⁸ Tr. pp. 4, 5.

⁵⁹ Tr. pp. 2, 3.

⁶⁰ Tr. pp. 4, 5.

⁶¹ Tr. pp. 7-9.

⁶² Tr. pp. 6, 7.

⁶³ Tr. pp. 13-17.

Obviously, it would be well nigh impossible for respondent here to recover against the Argentine government, owners of the Steamship "Rio Parana", for the damage which may well have occurred thereon.

That such damage may have so occurred is evidenced by the facts in the case of *Clark v. Barnwell*, (*In re Barque Susan W. Lind*),⁶⁴ where the ship owners were held not responsible for water damage and mold occurring on the interior of packages or boxes of cotton thread as a result of the dampness in the ship's hold. See also *Mendelsohn v. The Louisiana*,⁶⁵ *Ireguist v. Morewood*,⁶⁶ and *McCullough v. The Echo*,⁶⁷ all holding the ship not liable for the deterioration of the cargo caused by sweating in the hold. See also *The Ship Star of Hope v. Andrew S. Church et al.*⁶⁸

We do not believe that it was the intention of Congress that any such burden should be placed upon a domestic rail carrier. This is particularly true where the first leg of the journey is by water carrier, not subjected to the same degree of liability as are common carriers by rail.

Congress apparently intended that the Act should only apply to those shipments as to which a carrier could recover from all other carriers participating in the through transportation of the goods. This becomes clear when we see that a specific provision to this effect is now in the Act⁶⁹ and has been part of it since the adoption of the Carmack Amendment in 1906.⁷⁰

⁶⁴ 53 U. S. 272, 12 How. 272, 13 L. Ed. 985.

⁶⁵ 3 Woods, 47, F. C. 9,461.

⁶⁶ 13 Fed. Cas. 89, F. C. 7,061, aff. 23 How. (64 U. S.) 491, 16 L. Ed. 516.

⁶⁷ 16 Fed. Cas. 11, F. C. 8,740a.

⁶⁸ 17 Wall. (U. S.) 651, 21 L. Ed. 719.

⁶⁹ Appendix, p. 32.

⁷⁰ Appendix, pp. 84, 85.

We respectfully submit that, irrespective of any right that might be urged by any other shipper who may take the precaution to break the continuity of a combination foreign and domestic shipment and definitely determine and then allege that there had been no damage before delivery to the rail carrier, petitioner may not recover under the state of the record in this case.

V.

CONCLUSION

We, therefore, respectfully submit that the decision of the Court of Appeals for the Fifth Circuit should be affirmed.

Respectfully submitted,

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New Orleans, Louisiana,
January ..., 1950.

This is to certify that copies of this brief have been served on opposing counsel on January . . ., 1950.

.....

APPENDIX

The Carmack and Cummins Amendments to the Interstate Commerce Act as subsequently amended and presently in force. 49 U. S. C. 20(11) and (12).

"(11) Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transporation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party

entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: Provided, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water; Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent up-

on the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this chapter; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: Provided further, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action, which he has under the existing law; Provided further, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad; Provided further, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has

disallowed the claim or any part or parts thereof specified in the notice: And provided further, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: And provided further, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided." June 29, 1906, c. 3591, 34 Stat. 593; March 4, 1915, c. 176, 38 Stat. 1196; August 9, 1916, c. 301, 30 Stat. 441; February 28, 1920, c. 91, 41 Stat. 494; July 3, 1926, c. 761, 44 Stat. 835; March 4, 1927, c. 510, 44 Stat. 1448; April 23, 1930, c. 208, 46 Stat. 251; September 18, 1940, c. 722, 54 Stat. 916.

"(12) The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property." June 29, 1906, c. 3591, 34 Stat. 593; March 4, 1915, c. 176, 38 Stat. 1196; August 9, 1916, c. 301, 30 Stat. 441; February 28, 1920, c. 91, 41 Stat. 494; July 3, 1926, c. 761, 44 Stat. 835; March 4, 1927, c. 510, 44 Stat. 1448; April 23, 1930, c. 208, 46 Stat. 251; September 18, 1940, c. 722, 54 Stat. 916; June 3, 1948, c. 386, 62 Stat. 295.

Section 1 of Interstate Commerce Act as written and in force when the first and second Cummins Amendments were enacted.

"That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transhipment, or shipped from a foreign country to any place in the United States and carried to such place

from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid." February 4, 1887, c. 104, 24 Stat. 398; June 29, 1906, c. 3591, 34 Stat. 584; June 18, 1910, c. 309, 36 Stat. 544.

Carmack Amendment as it was adopted.

"That any common carrier, railroad, or transportation company receiving property for transportation, from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, railroad, or transportation company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line

the loss, damage, or injury shall have been sustained the amount of such loss, damage or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof." June 29, 1906, c. 3591, 34 Stat. 593.

First Cummins Amendment as it was adopted.

"Any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, the District of a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company, so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for trans-

portation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property. . . ." March 4, 1915, c. 176, 38 Stat. 1196.

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 403

403

RUDOLF REIDER,

Petitioner,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,

Respondent.

PETITION FOR REHEARING ON BEHALF OF
RESPONDENT.

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**GUY A. THOMPSON, Trustee, MISSOURI PACIFIC
RAILROAD COMPANY, Debtor,**

Respondent.

**PETITION FOR REHEARING ON BEHALF OF
RESPONDENT.**

Respondent, Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, respectfully petitions this court for a rehearing in this matter, because of several grievous errors that have been made in the majority opinion.

1. The Continuity of the Shipment.

This Court said in the majority opinion that whether the commerce is properly characterized as foreign or domestic is not material, and that, therefore, reliance upon the cases of *United States v. Erie Railroad Company*, 288 U. S. 98,

and *Texas and New Orleans R. Co. v. Sabine Tram Company*, 227 U. S. 111, and the long list of supporting authorities is misplaced. That statement completely disregards the decisions of this Court interpreting the very act of which the Carmack Amendment forms a part. All of the prior decisions of this Court have held that the continuity of the shipment is the decisive test of its character. To say that it is immaterial whether the commerce is foreign or domestic does violence to the express provisions of the Carmack Amendment, which negatives its applicability to shipments moving from non-adjacent foreign countries. The Amendment obviously cannot take effect at the border with respect to any import, and this Court by its other language in the majority opinion acknowledges that it cannot take effect in the middle of a shipment. Yet the holding of the majority opinion can only be justified if this Court is willing to overrule the doctrine clearly and frequently enunciated in the *Erie, Sabine Tram, supra*, and the other cases cited in our original brief, that a shipment such as the one in the instant case moved continuously in foreign commerce.

To say, as this Court does, that "Respondent was the receiving carrier squarely within the wording and meaning of the Carmack Amendment" is simply begging the question. As Judge Hutcheson and Mr. Justice Frankfurter recognized, "the answer to our problem is not to be had by taking words of the Carmack Amendment out of the illuminating context of the regulatory schemes of which they are a part."

We respectfully submit that the present shipment, which, by the standard enunciated by this Court, does constitute foreign inbound commerce, was specifically excluded by Congress from those covered by the Carmack Amendment.

2. The Applicability of the Porter case.

We submit that the majority opinion in this case cannot be harmonized with the decision of this Court in *Missouri Pacific R. Co. v. Porter*, 273 U. S. 341. Furthermore, we submit that the distinction announced in the majority opinion between the *Porter* case and the instant one is purely superficial.

The discussion of the Carmack and Cummins Amendments occupies a substantial (rather than a brief) portion of the opinion in that case. Moreover, if that opinion is read in any other than a cursory fashion, the reader can only reach the conclusion that this Court affirmatively held in the *Porter* case that the Carmack Amendment was not applicable to that shipment. We submit that this Court did so hold, and the only basis for its holding was that the Act did not apply to a shipment moving on separate bills of lading by rail and thence by ocean carriage.

As we pointed out in our original brief, the transcript in the *Porter* case shows that the terms of the bills of lading in that case were almost identical to those here. And the effect of the *Porter* case is even more decisive when

we appreciate that the actual damage that occurred to the shipment in that case admittedly occurred while it was in the possession of the rail carrier. Yet even then, this Court refused to permit an action to be brought against the rail carrier because the Carmack Amendment was not applicable to such shipment in foreign commerce.

As Mr. Justice Frankfurter said in his dissenting opinion, the Court had to consider the regulatory scheme of liability in order to decide the precise question in the *Porter* case. A careful examination of the decision in that case discloses no difference between that and the instant case except the direction of the movement. The basic problem here is not liability, as this Court said, but to determine whether Congress intended that a shipment such as in the instant case should be covered by the Act. We respectfully submit that Congress did not so intend and that the *Porter* case unequivocably holds that it did not.

Although plaintiff cannot recover under his petition unless he proves delivery to respondent in good condition, it is no answer to the jurisdictional question of whether the complaint states a claim under the Carmack Amendment.

3. The origin of the shipment.

The majority opinion says that the test is not where the shipment originated but where the obligation of the receiving carrier originated. We feel certain that the Court cannot mean what these words import in their usual connotation. The act specifically says that the test of its applicability is the origin as well as the destination of the shipment. There is a marked distinction, however, between the origin of the shipment and the origin of the

obligation of the receiving carrier. For, suppose, as in the Russo case, a rail carrier had issued a bill of lading calling for a through shipment from Buenos Aires by water to New Orleans, and thence by rail to Boston. There the obligation of the carrier would have originated in a non-adjacent foreign country. Conversely, if a carrier issued a through bill of lading for carriage of a shipment from a point in the United States by rail to a seaport and thence by water to a non-adjacent foreign country, the obligation of the carrier as a receiving carrier would have originated within the United States, yet in neither case could the Carmack Amendment be held applicable under its own terminology. Actually, the Circuit Court so held in the case of an import in the Russo case, and Your Honors so held in the Porter case involving an export shipment.

As authority for its holding, this Court cites two Idaho cases,¹ and one from an inferior Court in Georgia,² all decided over thirty-five years ago, and never followed since. As we pointed out in our original brief, these three cases not only are distinguishable from the instant case, but represent a decidedly minority view. To the contrary and supporting our position, is the decision in the Porter case, and that of the Supreme Courts of Illinois,³ Kansas,⁴ Missouri⁵ and Maryland.⁶

¹ Rice v. Oregon Short Line R. Co., 33 Idaho 565, 198 Pac. 161; Barrett v. Northern Pac. Ry. Co., 29 Idaho 139, 157 Pac. 1016.

² Baltimore & O. R. Co v. Montgomery & Co., 19 Ga. App. 29, 96 S. E. 740.

³ Lino, et al. v. The Northwestern Pac. R. R. Co., 332 Ill. 93, 163 N. E. 316.

⁴ Barber v. Missouri Pacific R. Company, 118 Kans. 651, 236 P. 859.

⁵ Lesser-Goldman Cotton Co. v. Missouri Pac. R. Co., 321 Mo. 714, 12 S. W. 2d 485, cert. den. 279 U. S. 855, 49 S. Ct. 351, 73 L. Ed. 997.

⁶ Fahey, et al. v. Baltimore & Ohio Railroad Company, 139 Md. 161, 114 A. 905.

We respectfully submit that the effect of the majority holding in this case is to overrule the *Porter*,⁷ *Lino*,⁸ *Barber*,⁹ *Lesser-Goldman*¹⁰ and *Fahey*¹¹ cases, which have stood unquestioned for years and in so doing has changed the existing concept, which had the obvious approval of Congress.

This Court, then, has overruled established jurisprudence and embarked on a new course for which even plaintiff's studious efforts could find no supporting authority.

Because the Carmack Amendment was a radical departure from the common law, and imposed a serious burden on the carriers, neither Congress nor the courts have heretofore extended the burden to cover a case such as the instant one.

⁷ 273 U. S. 341, 47 S. Ct. 383, 71 L. Ed. 672.

⁸ *Supra*, n. 1.

⁹ *Supra*, n. 2.

¹⁰ *Supra*, n. 3.

¹¹ *Supra*, n. 4.

CONCLUSION.

We respectfully submit that to maintain the majority opinion of this Court as the law of the land would impose a burden on carriers never intended by Congress, as this Court and the other appellate courts called upon to consider the question heretofore, have recognized. We therefore respectfully urge this Court to grant a rehearing herein.

Respectfully submitted,

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New Orleans, Louisiana, March 22, 1950.

I, M. Truman Woodward, Jr., Attorney for Respondent, do hereby certify that the above and foregoing petition is presented in good faith and not for delay.